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Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Rulemaking and Solicitation of Comments on
Centralized Waste Treatment Facilities Also Treating
Exploration and Production Waste—Log #MM003 (LAC 33:IX.101, 701, 703, 708, 715, 1701, 1703,
1705, 1707, 1709, 1711, 1799, 1901, 2313, 2501, 2903, 6509, 6701, 6703, 6705, 6707, 6709, 7305,
7307, and 7395; and XV.1404) (0806Pot2)

The Louisiana Department of Environmental Quality is requesting comments on the draft proposed regulations regarding centralized waste treatment facilities also treating exploration and production waste, LAC 33:IX.101, 701, 703, 708, 715, 1701, 1703, 1705, 1707, 1709, 1711, 1799, 1901, 2313, 2501, 2903, 6509, 6701, 6703, 6705, 6707, 6709, 7305, 7307, and 7395; and XV.1404 (MM003).

The provisions of this draft rule are applicable to discharges of wastewater by centralized waste treatment facilities (CWTs) that also treat oil and gas exploration and production (E&P) waste. The draft rule adds standards for these facilities, establishes financial assurance requirements for CWTs, and eliminates language that is no longer necessary due to the new CWT provisions. The existing financial assurance requirements for privately-owned sewage treatment facilities regulated by the Public Service Commission formerly in LAC 33:IX.Chapter 67 have been moved to Chapter 17. The existing financial assurance requirements for sewage sludge and biosolids formerly in LAC 33:IX.7307 and 7395 have been combined with the CWT financial assurance requirements and moved to Chapter 17. Portions of the oil E&P regulations formerly in LAC 33:IX.Chapter 17 have been added to LAC 33:IX.708. The department requests comments on the technical content of the proposed rule. The department also requests comments on the estimated cost of this proposed rule to the public and other interested parties who could be affected by this rule, for the purpose of preparing a Fiscal and Economic Impact Statement as required by law.

Written comments concerning the draft rule are due no later than 4:30 p.m., July 31, 2008, and should be submitted to Sharon Parker, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to sharon.parker@la.gov. Persons commenting should reference this document as MM003. Copies of the draft rule can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of MM003. This draft rule is available on the Internet at <http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx>.

The draft rule is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

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Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 1. Water Pollution Control

Chapter 1. General Provisions

§101. Scope and Purpose

A. These regulations establish requirements and procedures for permitting, enforcement, monitoring, and surveillance, and spill control activities of the Department of Environmental Quality.

B. LAC 33:IX.Chapters 1 and 3 shall not apply to any facility or discharge that is within the scope of coverage of the Louisiana Pollutant Discharge Elimination System (LPDES) program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

Chapter 7. Effluent Standards

§701. Purpose

A. The purpose of this Chapter is to establish a list of categories and classes of discharges for which effluent limitations, standards of performance, pretreatment standards, standards for toxic substances, and other standards have been or are to be established; and to set forth general terms for the application of such limitations and standards to the control of wastewater discharges through the Louisiana ~~Water~~ Pollutant Discharge Permit~~Elimination~~ System (~~LWDPS~~ LPDES).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§703. Scope

A. The following categories and classes of discharges are covered by this Chapter.

| | |
|--|---------------|
| Sand and Gravel Extraction | LAC 33:IX.705 |
| Sugar Processing | LAC 33:IX.707 |
| Exploration for and Production of Oil and Natural Gas | LAC 33:IX.708 |
| Miscellaneous Small Dischargers | LAC 33:IX.709 |
| Secondary Treatment for Sanitary Sewage | LAC 33:IX.711 |
| Chlorine-Bleaching Pulp and Paper Mill Dischargers | LAC 33:IX.713 |

Centralized Waste Treatment Facilities
also Treating Exploration and
Production Waste

LAC 33:IX.715

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended LR 17:965 (October 1991), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§708. Exploration for and Production of Oil and Natural Gas

A. ...

B. Definitions. The following definitions apply to terms used in this ~~Section~~Chapter. Definitions of other terms and meanings of abbreviations are set forth in LAC 33:IX.107 and 1105.

Average Monthly Discharge Limitation—~~Repealed, the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.~~

Ballast Water—~~Repealed, uncontaminated surface water used to maintain proper draft or to stabilize drilling or workover vessels.~~

Bilge Water—~~Repealed, water that accumulates in the bilge areas of drilling or workover vessels.~~

Blow-Out Preventer (BOP) Control Fluid—~~Repealed, fluid used to actuate the hydraulic equipment on the blow-out preventer.~~

* * *

Brackish Marshes—those areas that are inundated or saturated by surface water or groundwater of moderate salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, brackish emergent vegetation characterized by a prevalence of species typically adapted for life in such soil and contiguous surface water conditions. Typical vegetation includes bulltongue (*Sagittaria* spp.), wild millet (*Echinochloa walteri*), bullwhip (*Scirpus californicus*), sawgrass (*Cladium jamaicense*), wiregrass (*Spartina patens*), three-cornered grass (*Scirpus olneyi*), ~~eco (*Scirpus robustus*)~~, and widgeongrass (*Ruppia maritima*). Brackish marshes are also characterized by interstitial water salinity that normally ranges between ~~3~~seven and 15 parts per thousand (ppt) or practical salinity units (psu).

* * *

Centralized Waste Treatment Facility (CWT)—a facility defined in EPA's Effluent Guidelines and Standards, 40 CFR Subchapter N, §437.2 (Centralized Waste Treatment Point Source Category), incorporated by reference in LAC 33:IX.4903.

* * *

Daily Discharge—~~Repealed, the discharge of a pollutant measured during a calendar day or within any specified 24-hour period that reasonably represents the calendar day for the purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.~~

* * *

~~*Deck Drainage*—Repealed all waste resulting from platform washing, deck washing, equipment washing, rainwater and runoff from curbs, gutters, and drains, including drip pans and wash areas.~~

~~*Desalinization Unit Discharge*—Repealed wastewater associated with the process of creating fresh water from salt water.~~

* * *

Exploration and Production Waste (E&P Waste)—drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells, which are not regulated by the provisions of, and therefore are exempt from, the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended.

* * *

~~*Fire Control System Test Water*—Repealed surface water and fire fighting agents discharged during periodic testing of fire control systems.~~

Freshwater Emergent Wetlands (including Freshwater Marshes)—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, freshwater emergent vegetation. Typical vegetation includes cattail (*Typha angustifolia*), bulltongue (*Sagittaria* spp.), maiden cane (*Panicum hemitomon*), water hyacinth (*Eichornia crassipes*), pickerelweed (*Pontederia cordata*), alligatorweed (*Alternanthera philoxeroides*), and *Hydrocotyl* spp. Freshwater emergent wetlands also are characterized by interstitial water salinity that is normally less than 2 ppt or psu. There are two subtypes of freshwater emergent wetlands: floating and attached. Floating wetlands are those areas where the wetland surface substrate is detached and is floating above the underlying deltaic plain (also called “buoyant” and “flotant”). Attached wetlands are those areas where the vegetation is attached to the wetland surface and is contiguous with the underlying wetland substrate and can be submerged or emergent.

~~*Freshwater Swamps and Marshes*—Repealed those areas that are inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes maiden cane (*Panicum hemitomon*), *Hydrocotyl* sp., water hyacinth (*Eichhornia crassipes*), pickerelweed (*Pontederia cordata*), alligatorweed (*Alternanthera philoxeroides*), and bulltongue (*Sagittaria* sp.). Interstitial water salinity is normally less than two parts per thousand.~~

~~*Intermediate Marshes*—Repealed those areas that are inundated or saturated by surface water or groundwater of low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes wiregrass (*Spartina patens*), deer pea (*Vigna repens*), bulltongue (*Sagittaria* sp.), wild millet (*Echinochloa walteri*), bullwhip (*Scirpus californicus*), and sawgrass (*Cladium jamaicense*). Interstitial water salinity normally ranges between three and six parts per thousand.~~

Louisiana Pollutant Discharge Elimination System (LPDES)—the state-delegated program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and for imposing and enforcing pretreatment requirements, under Sections 307, 402,

318, and 405 of the CWA.

Native Mud Drilling Fluids—~~Repealed~~ those drilling fluids that do not contain heavy metal based additives such as chrome lignosulfonate or weighting agents such as barite or hematite.

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Produced Sand—~~Repealed~~ sand and other solids removed from produced water, oil, or gas.

* * *

Saline Marshes—~~Repealed~~ those wetland areas that are inundated or saturated by surface water or groundwater of salinity characteristic of near Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes oystergrass (*Spartina alterniflora*), glasswort (*Salicornia* sp.), black rush (*Juncus roemerianus*), *Batis maritima*, black mangrove (*Avicennia nitida*), and saltgrass (*Distichlis spicata*). Interstitial water salinity normally exceeds 16 parts per thousand.

Salt (Saline) Marshes—those wetland areas that are inundated or saturated by surface water or groundwater of salinity characteristic of nearshore Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, saline emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes oystergrass (*Spartina alterniflora*), glasswort (*Salicornia spp.*), black rush (*Juncus roemerianus*), saltwort (*Batis maritime*), black mangrove (*Avicennia nitida*), and saltgrass (*Distichlis spicata*). Interstitial water salinity normally exceeds 16 ppt or psu.

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Source Water and Sand—~~Repealed~~ water, including the entrained solids, from non-hydrocarbon bearing formations used for the purpose of pressure maintenance or secondary recovery.

* * *

Well Completion Fluid—~~Repealed~~ salt solutions, sometimes containing various additives, which are used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production. Drilling fluids remaining in the wellbore during logging, casing and cementing operations or during temporary abandonment of the well are not considered completion fluids.

Well Treatment Fluid—~~Repealed~~ fluids used to restore or improve productivity by chemically or physically altering hydrocarbon bearing strata after a well has been drilled. These fluids include substances such as acids, solvents, and propping agents.

Wetlands—those areas that have one or more of the following attributes: support hydrophytic (water tolerant) vegetation during most of the year; contain predominately undrained hydric (water saturated) soils; and/or are periodically inundated or saturated by surface water or groundwater.

* * *

C. - C.1.a.

...

b. No oily fluids shall be discharged to, or allowed to flow onto, the ground, or be carried from the original lease in open ditches, or be discharged or allowed to flow into any stream, lake, or other body of water.

~~c~~b. A Spill Prevention and Control Plan shall be prepared and implemented in accordance with the provisions specified in LAC 33:IX.901-907. This plan shall establish a program for regular inspection of all storage tanks, separators, and related production and transfer equipment. The plan shall also include provisions for, at a minimum, annual monitoring of flow line integrity through a combination of visual inspection and pressure testing or through the use of an approved alternate methodology. Inspection and test records shall be maintained for a minimum of three years. The plan shall also establish provisions for ready access to, and rapid deployment of, containment booms and ancillary spill containment and cleanup equipment. Discharges shall be controlled through the following measures.

i. All workover and drilling barges, and production facilities shall be equipped with pollution containment devices that under normal operating conditions prevent unauthorized discharges.

ii. All storage tanks, separators, and related production and transfer equipment to be located in open water or wetland areas, where building dikes is impossible or impracticable, shall be installed on impervious decking provided with a system of curbs, gutters, and/or sumps capable of retaining spills of oil, produced water, or any other product or waste material. ~~Storage and processing facilities located in open water or wetland areas that lack appropriate spill prevention and control appurtenances shall be modified to achieve compliance within four years after promulgation of these regulations.~~

iii. All drains from diked areas shall be equipped with valves that are kept in the closed position except during periods of supervised discharge.

iv. On all pumping wells, over water or marsh, there shall be installed an adequate impervious deck or other device with a catch tank installed around the wellhead. The catch tank should be equipped with a "stiff-leg" to enable the operator to dispose of excess rainfall.

v. Each permanent oil tank or battery of tanks that are located within the corporate limits of any city, town, or village, or where such a tank is closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church, or where such a tank is so located as to be deemed a hazard by the administrative authority, shall be surrounded by a dike (or fire wall) or retaining wall consistent with LAC 33:IX.Chapter 9. At the discretion of the administrative authority, fire walls of 100 percent capacity can be required where other conditions or circumstances warrant their construction.

vi. Oil gathering lines, or any other lines used for transporting oil, shall be regularly inspected and all leaks shall be immediately repaired. All barges used for the transportation of crude oil or petroleum products shall be in proper operational condition. Leaking barges shall be repaired before reuse. Loading racks, barge-loading outlets, and similar installations shall be operated at all times with full precaution against spillage. Such installations shall be surrounded by a ditch graded to a gathering sump, or shall be provided with an impervious deck surrounded by a steel gutter leading to a sump, or with such other equipment as is adequate for the accomplishment of the purpose of spill prevention consistent with LAC 33:IX.Chapter 9. All such gathering sumps shall be cleared regularly by removal or other safe disposal of the oily waste. After each operation of barge or tanker loading equipment, loading hoses and connections shall be carefully drained, and the gathering sumps shall be emptied.

~~vii~~iv. In the event of an unauthorized discharge of oil, produced water, or any other product or waste material, a remedial response must be immediately initiated and the Office of Environmental Compliance shall be notified in accordance with LAC

~~33:I.Chapter 393901 et seq.~~ The remedial response shall include immediate removal of discharged materials and, to the extent practicable, decontamination of any water, soil, sediment, or vegetation adversely impacted by the unauthorized discharge. If immediate cleanup is not considered to be an appropriate remedial measure, the responsible party shall notify the Office of Environmental Compliance of the alternative remedial plan and shall promptly implement said plan upon approval by the department. Submission of an alternate plan shall in no way relieve the responsible party of its duty to contain and mitigate the effects of the discharge.

~~viii.~~ Use of detergents, emulsifiers, or dispersants to clean up spilled oil is prohibited unless the use has been specifically approved by the department or is necessary to maintain a safe work environment (i.e., minimization of the potential for personnel injury due to slipping hazards). In all such cases, initial cleanup shall be done by physical removal. Detergents, emulsifiers, or dispersants shall not be employed to sink, obscure, or camouflage spilled materials or to in any way hinder observation of a spill event.

~~ix.~~ At least 2 feet of freeboard shall be maintained in all earthen pits at any all times. ~~Any discharge of wastewater from earthen pits directed to waters of the state must be conducted in accordance with the provisions of a valid Louisiana Water Discharge Permit System (LWDPS) permit.~~

2. Produced Water

a. ~~Freshwater Areas~~

i. ~~All produced water discharges must be specifically identified in a valid LWDPS permit.~~

ii. ~~The discharge of produced water directly onto any vegetated area, soil, or intermittently exposed sediment surface is prohibited.~~

iii. ~~There shall be no discharge of produced water to lakes, rivers, streams, bayous, canals, or other surface waters of the state in areas regionally characterized as upland.~~

iv. ~~There shall be no discharge of produced water to freshwater swamp or freshwater marsh areas or to natural or manmade water bodies bounded by freshwater swamp or freshwater marsh vegetation unless the discharge has been specifically identified in an approved schedule for discharge termination, and the discharge complies with all applicable portions of LAC 33:IX.708.C.2.e.~~

v. ~~A schedule for discharge termination shall not be approved for a surface discharge initiated after the promulgation of this regulation. The operator of a facility having a produced water discharge in existence on the date of promulgation of these regulations shall be subject to the prohibition against surface discharge of produced water unless the operator establishes that surface discharge is the only immediately available alternative and that the produced water discharge termination schedule is limited in term to the period necessary to provide an alternate waste handling method. A compliance schedule that would delay compliance beyond July 1, 1992, will not be approved.~~

b. ~~Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas~~

i. ~~All produced water discharges must be specifically identified in a valid individual or general permit or order and must comply with all applicable portions of LAC 33:IX.708.C.2.f.~~

ii. ~~The discharge of produced water directly onto any vegetated area, soil, or intermittently exposed sediment surface is prohibited.~~

~~iii. — There shall be no discharge of produced water to natural or man-made water bodies located in intermediate, brackish, or saline marsh areas after January 1, 1995, unless the discharge or discharges have been authorized in an approved schedule for elimination or effluent limitation compliance.~~

~~iv. — Each operator of a facility with a produced water discharge in existence on the date of promulgation of these regulations shall submit a schedule within six months after promulgation detailing a time frame for achieving compliance with the restrictions imposed by Subparagraph b.i x. The compliance schedule shall be prepared in conformance with the following guidelines.~~

~~(a). — An operator conducting three or more produced water discharges shall submit for approval a schedule of compliance that will result in phased elimination or compliance with applicable effluent limitations for all produced water discharges by January 1, 1995. The schedule is expected to call for termination of discharge or compliance with applicable effluent limitations for approximately one third of the discharges existing on the date of promulgation by January 1, 1993; for two thirds of the discharges by January 1, 1994; and for full compliance by January 1, 1995.~~

~~(b). — An operator conducting no more than two produced water discharges shall submit for approval a schedule of compliance that will result in phased elimination or compliance with applicable effluent limitations for all produced water discharges by January 1, 1995. One discharge is expected to be eliminated or conducted in compliance with applicable effluent limitations by January 1, 1994.~~

~~(c). — An operator conducting a single produced water discharge shall eliminate surface discharge or conduct the discharge in compliance with applicable effluent limitations by January 1, 1994.~~

~~(d). — Facilities with a total produced water discharge of 250 barrels/day or less and a maximum oil production of 100 barrels/day or the monetary equivalent in natural gas, as of the effective date of this regulation, will be provided an additional year to comply with the requirements of LAC 33:IX.708.C.2.b.i x.~~

~~(e). — Operators discharging to the open waters and at least one mile from any shoreline in Chandeleur Sound, Breton Sound, Barataria Bay, Caminada Bay, Timbalier Bay, Terrebonne Bay, East Cote Blanche Bay, West Cote Blanche Bay, or Vermilion Bay from production originating in these areas will have two years after the effective date of these regulations or one year after completion of the U.S. Department of Energy's (DOE) study concerning Louisiana coastal bays, whichever comes first, to show on a case by case basis that their particular discharge should be exempt from these regulations, if the DOE study, after scientific peer review, shows minimal acceptable environmental impacts.~~

~~v. — Requests for an extension of the compliance period beyond the January 1, 1995, deadline will be considered if submitted with the original compliance schedule and if the following conditions are met.~~

~~(a). — The operator establishes that surface discharge is the only immediately available and economically feasible alternative, that continued discharge does not represent gross potential for unacceptable environmental degradation, and that the produced water discharge termination schedule is limited in term to the period necessary to provide an alternate waste handling method.~~

~~(b). — The proposed extension would not extend the date of discharge termination or effluent limitation compliance beyond January 1, 1997.~~

vi. ~~— A compliance schedule will not be required for a surface discharge initiated after the promulgation of these regulations; however, produced water discharges authorized after the date of promulgation but before December 31, 1992, must be eliminated or conducted in compliance with applicable effluent limitations by January 1, 1995. Produced water discharges authorized after December 31, 1992, must achieve compliance with applicable effluent limitations on the date of discharge initiation.~~

vii. ~~— The following effluent limitations establish the quantity or quality of pollutants or pollutant properties that may be discharged by a facility subject to this Section:~~

| Pollutant or Pollutant Property | Discharge Limitation |
|--|---|
| Benzene | 0.0125 mg/L daily maximum |
| Ethylbenzene | 4.380 mg/L daily maximum |
| Toluene | 0.475 mg/L daily maximum |
| Oil and Grease | 15 mg/L daily maximum |
| Total Organic Carbon | 50 mg/L daily maximum |
| pH | 6-9 standard units |
| Temperature | (as per LAC 33:IX.1113.C.4) |
| Total Suspended Solids | 45 mg/L daily maximum |
| Chlorides | Dilution required at a ratio of 10:1 (ambient water: produced water). All other prescribed parameters must be within acceptable limits prior to dilution. |
| Dissolved Oxygen | 4.0 mg/L daily minimum |
| Toxicity (Acute and Chronic) | 1 Toxicity Unit |
| Soluble Radium | 60 picocuries/L (2.2 becquerels/L) |
| Visible Sheen | No Presence |

[NOTE: The numerical limitations listed above are to be construed as minimum effluent standards and should in no way be considered authorization to induce a violation of ambient water quality standards.]

viii. ~~— Surface disposal of de minimis quantities (less than 1 barrel per day) of produced water may be authorized on a case-by-case basis. Effluent limitations for de minimis discharges will be established on a case-by-case basis in accordance with the provisions of the LWDPS permit authorizing the discharge, but will at a minimum require that the effluent be treated to a point at which the discharge does not generate a persistent visible sheen.~~

a. ~~ix.~~ There shall be no discharge of produced water within the boundaries of any state or federal wildlife management area, refuge, park, or scenic stream or into any water body determined by the department to be of special ecological significance.

b. ~~x.~~ Produced water shall not be discharged within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No produced water shall be discharged in a manner that, at any time, facilitates the incorporation of significant quantities of hydrocarbons or radionuclides into sediment or biota.

c. ~~— Territorial Seas~~

i. ~~— All produced water discharges must be specifically identified in a valid LWDPS permit.~~

~~ii. — Surface disposal of produced water into open waters of the Gulf of Mexico within the area defined as the territorial seas may be authorized on a case-by-case basis in accordance with the provisions of the LWDPS permit authorizing the discharge.~~

~~c. iii. The discharge of produced water directly onto any vegetated area, soil, or intermittently-exposed sediment surface is prohibited.~~

~~iv. — Produced water shall not be discharged within the boundaries of any state or federal wildlife management area, refuge, or park or into any water body determined by the department to be of special ecological significance.~~

~~v. — Produced water shall not be discharged within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No produced water shall be discharged in a manner that, at any time, facilitates the incorporation of significant quantities of hydrocarbons or radionuclides into sediment or biota.~~

~~d. — Radioactivity and Toxicity Analyses. A radioactivity measurement, acute toxicity test, and chronic toxicity test shall be conducted using test methods approved by the administrative authority on representative samples of all existing produced water discharges that flow to the surface waters of the state. The results of the radioactivity analysis and the average daily discharge rate (barrels per day) shall be submitted to the department by August 20, 1989. The results of the toxicity analyses and the average daily discharge rate (barrels per day) shall be submitted to the department by February 20, 1990.~~

~~e. — Discharge of Produced Water into Freshwater Areas after January 1, 1997~~

~~i. — In light of LPDES general permit LAG290000 and the "Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category," published December 16, 1996, and effective January 14, 1997 (the federal guidelines), facilities that discharge produced water as authorized in a valid LWDPS permit as of July 1, 1996, shall cease the discharge of produced water by July 1, 1997, unless the continued discharge is specifically identified in an order.~~

~~ii. — Each facility desiring to continue to discharge produced water after July 1, 1997, shall submit to the department, no later than May 1, 1997, a schedule to:~~

~~(a). — accomplish reinjection of the produced water as expeditiously as possible; or~~

~~(b). — return their produced water which originated seaward of the coastal areas identified in LAC 33:IX.708.C.2.e.iv.(a) to those areas of origin.~~

~~iii. — In addition to the schedule required in LAC 33:IX.708.C.2.e.ii, the submittal shall include, at a minimum, a certification by the facility operator of all of the following:~~

~~(a). — surface discharge of produced water is the only immediately available alternative;~~

~~(b). — the produced water discharge elimination schedule is limited in term to the period necessary to provide an alternate waste handling method;~~

~~(c). — the discharge of produced water has not been eliminated pending the installation of injection systems or returning it to its area of origin (seaward of the coastal areas identified in LAC 33:IX.708.C.2.e.iv.(a));~~

~~(d). — the discharge will not cause a violation of water quality standards in the receiving waters; and~~

- (e).—~~the discharge was previously permitted.~~
 - iv. ~~Discharges of produced water pursuant to this rule shall not extend beyond the date upon which the produced water discharge can reasonably be eliminated. In no event shall a discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, continue:~~
 - (a).—~~beyond January 1, 1999, for produced water generated in coastal areas as defined in 40 CFR Part 435.41(e);~~
 - (b).—~~beyond January 1, 2000, for produced water generated seaward of coastal areas identified in LAC 33:IX.708.C.2.e.iv.(a); or~~
 - (c).—~~beyond January 1, 2000, for facilities that discharge produced water generated in any combination of areas described in LAC 33:IX.708.C.2.e.iv.(a) and (b).~~
 - v. ~~There shall be no discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, after January 1, 2000.~~
 - f. ~~Discharge of Produced Water into Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas after January 1, 1997~~
 - i. ~~Notwithstanding the absolute deadline of LAC 33:IX.708.C.2.b.v.(b) and in light of the federal guidelines, facilities previously authorized by valid LWDPS permits as of July 1, 1996, to discharge produced water under LAC 33:IX.708.C.2.b.iv, pursuant to an approved compliance schedule shall:~~
 - (a).—~~cease the discharge of produced water by February 14, 1997; or~~
 - (b).—~~submit a revised schedule to accomplish injection of the produced water as expeditiously as possible. This schedule shall be received by the department on or before February 14, 1997. Submission of a schedule is not a defense to an enforcement action for a facility's failure to adhere to the terms and conditions of its permit or prior compliance schedule. In addition to the schedule submission, a certification must be submitted by the facility operator which includes the requirements of LAC 33:IX.708.C.2.e.iii. No compliance schedules in an enforcement order shall extend beyond the minimum time demonstrated necessary for elimination of the discharge and in no case beyond January 1, 1999.~~
 - ii. ~~All terms, conditions, limitations, and requirements of the most recent LPDES permit or compliance schedule or order identifying a produced water discharge shall continue in full force and effect unless the department provides otherwise in writing. A schedule to discharge produced water after July 1, 1997, is solely within the department's enforcement discretion and shall be granted only through a compliance order.~~
 - iii. ~~There shall be no discharge of produced water to natural or man-made water bodies located in intermediate, brackish, or saline marsh areas after January 1, 1999.~~
3. Drill Cuttings and Drilling Fluids
- a. ~~The discharge of drill cuttings or drilling fluids, including stormwater runoff contaminated by drill cuttings or drilling fluids, must be conducted in accordance with a valid LWDPS permit.~~
 - b. ~~There shall be no discharge of oil-based drilling fluids.~~
 - c. ~~There shall be no batch or bulk discharge of drilling fluids bodies inland of the territorial seas.~~

~~a~~d. Drilling fluids or drill cuttings shall not be discharged within the boundaries of state or federal wildlife management areas, refuges, parks, or scenic streams or into any water body determined by the department to be of special ecological significance.

b.e. The discharge of drill cuttings or bulk drilling fluids (if allowed) must not occur within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No discharge shall be made in such a manner as to allow deposition of drill cuttings or drilling fluids in or upon any active oyster lease, live natural reef, or seed bed. If the discharge is to take place within ~~one~~ 1 mile of an area containing oyster leases, a lease map must be forwarded to the Office of Environmental Services showing the location of the discharge and surrounding leases. If the applicant considers any oyster lease, live natural oyster or other molluscan reef, or designated seed bed within 1,300 feet of a discharge of drilling fluids or drill cuttings to be inactive, written documentation and evidence must be submitted to the Office of Environmental Services for a determination to be made as to the acceptability of such a discharge.

~~f. In fresh and intermediate marsh areas, only drill cuttings generated on-site and their adhering native mud drilling fluids may be discharged.~~

~~g. There shall be no discharge of drill cuttings generated in association with the use of oil-based drilling fluids, invert emulsion drilling fluids, or drilling fluids that contain diesel oil, waste engine oil, cooling oil, gear oil, or other oil-based lubricants.~~

~~h. Documentation shall be maintained detailing the nature and volume of all constituents added downhole in conjunction with drilling and workover operations. This documentation shall be available for inspection on-site during drilling and workover operations and thereafter in accordance with the provisions of LAC 33:IX.311.J.7.~~

4. Stormwater Runoff

~~a. An LWDPS permit may be required for stormwater runoff discharges generated in conjunction with exploration and production activities in upland regions.~~

~~b. The discharge of stormwater runoff generated in conjunction with exploration and production activities conducted in any region not designated as upland must be reflected in a valid LWDPS permit unless appropriate prior dispensation has been received from the department.~~

a.e. There shall be no discharge of free oil or other oily materials from any facility as evidenced by a visible sheen or residual oil deposits or stains in the drainage area downstream of the discharge point.

b.d. Stormwater runoff shall not exceed 100 mg/L chemical oxygen demand, 50 mg/L total organic carbon, or 15 mg/L oil and grease.

c.e. Maximum chloride concentration of the discharge shall not exceed two times the ambient concentration of the receiving water in brackish marsh areas and shall not exceed 500 mg/L in freshwater or intermediate marsh areas and upland areas.

d.f. The discharge of stormwater runoff from diked areas employed for the purpose of secondary containment shall be ~~permitted~~ allowed provided: the discharge is generated from areas that have not been contaminated by accidental spills or by the discharge of waste materials.

~~i. the discharge is generated from areas that have not been contaminated by accidental spills or by intentional discharge of waste materials; or~~

~~ii. the discharge has been specifically identified in a valid LWDPS permit.~~

5. Drilling Fluid Reserve Pit and Production Pit Closure. This discharge category includes the discharge of treated wastewater from drilling site reserve pits, ring levee borrow ditches, shale barges, drilling fluid dewatering systems, and abandoned or inactive oil field production pits that contain only nonhazardous oil field wastes. Discharges from any pit receiving oil field waste after December 15, 1996, are prohibited. The treatment and discharge of water from off-site oil field waste disposal pits or pits containing waste other than nonhazardous oil field wastes are prohibited.

a. Discharge of treated wastewater must be specifically identified in a valid ~~LWDPS~~ LPDES permit.

b. – f. ...

6. Oil and Gas Exploration and Production Service Companies

a. Wash water from cleaning the interior of equipment, tanks, vessels, etc., which contains substances and waste material associated with the oil and gas exploration and production industry, may be discharged in accordance with an LPDES permit at the service company's place of business (or treatment facility) provided the heels have been drained from the equipment, tanks, vessels, etc.

b. The heels must not be discharged and must be disposed of in accordance with state and federal regulations or at a centralized waste treatment facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:261 (April 1989), amended LR 17:263 (March 1991), LR 23:860 (July 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2544 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2506 (October 2005), LR 33:2162 (October 2007), LR 34:**.

§715. Centralized Waste Treatment Facilities (CWTs) also Treating E&P Waste

A. Applicability. The provisions of this Section are applicable to discharges of wastewater by centralized waste treatment facilities that also treat oil and gas exploration and production waste.

B. Any discharge to waters of the state from a CWT must be in accordance with an LPDES permit and other applicable state and federal regulations.

C. In addition to the parameters listed in the CWT Effluent Guidelines, incorporated by reference in LAC 33:IX.4903, additional parameters will be limited and monitored in the LPDES permit.

1. The chloride concentration shall not exceed 500 mg/L and shall meet this standard without dilution during the treatment process. (If the discharge is in a saline or brackish area, the discharge shall not exceed 500 mg/L, or two times the ambient chloride concentration. Monitoring in the ambient water body will be required outside the zone of influence of the effluent.)

2. The following radionuclides shall not exceed the indicated levels:

a. total radium 226 and radium 228 (combined), 60 pCi/L; and

b. uranium, 300 pCi/L.

D. Radiation Survey. In accordance with LAC 33:XV.1407, a confirmatory radiation survey shall be performed and a report submitted to the Office of Environmental Compliance. This survey shall be performed quarterly. If a survey shows the presence of naturally occurring

radioactive material (NORM) in excess of exempt levels provided in LAC 33:XV.1404, the Office of Environmental Compliance shall be notified for additional requirements. Surveys and monitoring shall comply with LAC 33:XV.430.A-B. Water samples shall be analyzed to determine compliance with LAC 33:XV.499, Appendix B.

E. Existing facilities seeking to accept E&P waste shall request a permit modification to do so within 90 days of promulgation of these regulations, [date to be inserted].

F. Closure Requirements. Closure ensures protection of the public and environment against leakage of potentially hazardous constituents once the facility ceases operations. Therefore, closure of the facility by the permit holder must:

1. minimize the need for further maintenance;
2. control, minimize, or eliminate, to the extent necessary to prevent threats to human health and the environment, post-closure escape of waste constituents or waste decomposition products to the groundwater, surface water, atmosphere, and soil; and
3. comply with all other closure requirements of this Section including Paragraph N.2 of this Section (i.e., written release regarding NORM contamination).

G. Closure Standard. In order to satisfy the closure requirements of Subsection F of this Section the permit holder must utilize the Risk Evaluation/Corrective Action Program (RECAP) standards in accordance with LAC 33:I.Chapter 13 to the fullest extent possible. Any residual contamination must meet the RECAP standards approved by the administrative authority, including any residual contamination in the underlying and surrounding soils and/or groundwater. Otherwise, Subsection P of this Section requires the permit holder to enter into a cooperative agreement with the administrative authority to perform corrective action (i.e., additional closure activities including site investigation, remedial investigation, a corrective action study, and/or remedial action).

H. Proper Waste Management. Wastewater and other waste (e.g., sludge, oil, and other residues) must be managed, treated, transported, and disposed of under the applicable regulations of LAC 33:V, VII, IX, and/or XV. Any contaminated containment system components, equipment, structures, and soils remaining at the time of closure must be properly disposed of or decontaminated, unless otherwise allowed for in LAC 33:V, VII, IX, and/or XV. The permit holder may become a generator of hazardous waste and must manage that waste in accordance with all applicable requirements of LAC 33:V.Chapter 11. (Facilities that receive listed hazardous waste defined in LAC 33:V.4901 must manage all waste derived from the listed waste in accordance with LAC 33:V, unless the facility has received a nonhazardous environmental medium (NHEM) determination in accordance with LAC 33:V.106.)

I. Closure Cost Estimate. Subsection J of this Section requires the permit holder to provide financial assurance for closure of the facility. Accordingly, the permit holder must submit to the administrative authority for approval a closure cost estimate. The cost estimate shall be submitted under separate cover from the closure plan required in Subsection K of this Section and be approved by the administrative authority as part of the permit issuance process.

1. The cost estimate must be detailed and itemize the costs of closure of the facility, based on hiring a third party (i.e., an entity who is neither a parent nor a subsidiary of the owner or operator) at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive (i.e., maximum inventories; assuming all contents will require offsite disposal as a hazardous waste; and no salvage value from the sale of wastes, structures, equipment, land, or other associated assets).

2. The cost estimate must be revised during closure to include corrective

action pursuant to Subsection P of this Section, when deemed necessary by the administrative authority.

J. Financial Assurance. The permit holder must submit to the administrative authority for approval a financial assurance mechanism drafted in accordance with LAC 33:IX.Chapter 17 to cover the cost estimate developed under Subsection I of this Section. The financial assurance mechanism shall be submitted with the application under separate cover and be approved by the administrative authority as part of the permit issuance process. The financial assurance mechanism must be approved by the administrative authority prior to the permit holder's operating the facility (i.e., receipt and treatment of any wastewater).

K. Closure Plan. The permit holder must submit to the administrative authority for approval a closure plan addressing all activities and requirements associated with the closure of the facility. The closure plan shall be submitted with the application under separate cover and be approved by the administrative authority as part of the permit issuance process. The closure plan shall include the following, at a minimum:

1. the anticipated date of final closure;
2. a schedule of closure activities;
3. information regarding the wastewater and other waste processed at the facility. This must include the entire operating history and shall be used to determine the chemical constituents and parameters that will be used to verify closure in accordance with Paragraph K.4 of this Section, and how the wastewater and other waste will be managed at the time of closure in accordance with Paragraph K.6 of this Section. The following shall be included:
 - a. a detailed description of the types, sources, and categories of wastewater received and treated at the facility and waste generated and shipped offsite by the facility (e.g., hazardous [characteristic, listed], non-hazardous, NORM, E&P, etc.; sludge, wastewater, oil, etc.); and
 - b. a detailed description of the waste characterization methodology (i.e., sampling and analytical procedures) that will be utilized to classify the waste as hazardous or non-hazardous (including a plan view of the facility, number of samples, sample types, sampling locations, analytical procedures, and sampling quality-assurance/quality-control programs);
4. selection of the chemical constituents and parameters to be sampled that are intrinsic to the wastewater that entered the facility, in order to verify closure. (Full justification regarding parameters selected shall be provided.);
5. a detailed description of each unit (including an estimate of the maximum inventory of wastewater and other waste ever to be on-site at any given time) at the facility and how each unit will be closed;
6. a detailed description of the procedures for removing, transporting, treating, storing, or disposing of all wastewater and other waste, and identification of the type(s) of off-site treatment, storage, and/or disposal units to be used, if applicable;
7. a detailed description of the procedures for disposing or decontaminating all contaminated containment system components, equipment, and structures. This shall include the criteria for determining the extent of decontamination required to satisfy the closure performance standard, including:
 - a. documentation regarding the sampling and analytical methods used (including a plan view of the facility, number of samples, sample types, sampling locations,

analytical procedures, and sampling quality-assurance/quality-control programs); and

b. a discussion comparing the samples to the applicable RECAP standards; and

8. a detailed description of the procedures and requirements for verifying that the underlying and surrounding soils have not been contaminated due to the operation of the facility. (If it deems it necessary to do so, the administrative authority may require verification that the underlying and surrounding groundwater has not been impacted.) At a minimum, the following shall be included:

a. a discussion of records to be reviewed at the time of closure (e.g., spill reports, housekeeping practices, etc.);

b. documentation regarding the sampling and analytical methods used (including a plan view of the facility, number of samples, sample types, sampling locations, analytical procedures, and sampling quality-assurance/quality-control programs); and

c. a discussion comparing the samples to the applicable RECAP standards.

L. Maintenance of the Closure Plan. Until final closure is completed and certified in accordance with Subsection N of this Section, a copy of the approved plan and all approved revisions shall be maintained at the facility by the permit holder and furnished to the administrative authority upon request. As necessary, the permit holder must submit to the administrative authority for approval a written request for revisions to the closure plan. Such a request shall include a copy of the amended closure plan and be submitted at least 60 days prior to the proposed change in facility design or operation, or no later than 30 days after an unexpected event has occurred. Revisions must be requested whenever:

1. changes in operating plans or facility design are planned;

2. changes in the expected year of closure, if applicable, are made;

3. in conducting closure activities, unexpected events occur; or

4. the administrative authority requests revisions to the plan.

M. Notification of Intent to Close. At least 90 days before closure of the facility, the permit holder shall notify the Office of Environmental Services in writing of the intent to close the facility. The following information shall be provided:

1. the date of the planned closure;

2. changes, if any, requested in the approved closure plan and cost estimate (Changes must be approved by the administrative authority prior to implementation.); and

3. the closure schedule.

N. Closure Certification. Ninety days after the completion of closure, the permit holder must submit a closure certification report describing the completion of the closure activities in accordance with the approved closure plan. The certification must be signed by the permit holder and by an independent registered professional engineer.

1. The closure certification report must fully demonstrate that the closure meets the requirements and standard of Subsections F and G of this Section.

2. The closure certification report must contain a written release from the Office of Environmental Compliance indicating that all NORM contamination has been fully addressed in accordance with LAC 33:XV.

3. The closure certification report must contain a copy of the document that will be filed upon closure of the facility with the official parish recordkeeper indicating the location of the property and its usage for treatment of wastewater, unless the closure plan

specifies a clean closure.

4. Any deviations from the closure plan must be documented in the closure certification report.

5. If the closure certification report adequately addresses Paragraphs N.1 and 2 of this Section and has been approved by the administrative authority, the permit holder shall submit a request to the administrative authority for the release of the closure financial assurance mechanism. The closure financial assurance mechanism will then be released to the permit holder or financial institution.

O. Closure Deadlines

1. Closure deadlines are as follows.

a. The permit holder must begin closure within 30 days after the date on which the facility receives the known final volume of wastewater, or if there is a reasonable possibility that the facility will receive additional wastewater, no later than one year after the date on which the unit received the most recent volume of wastewater.

b. The permit holder must treat or remove from the facility all wastewater and other waste in accordance with the approved closure plan, within 90 days after receiving the final volume of wastewater.

c. The permit holder must complete all closure activities (except corrective action specified in Subsection P of this Section) in accordance with the approved closure plan within 180 days after receiving the final volume of wastewater at the facility.

2. The administrative authority may approve longer periods if the permit holder has taken and continues to take all steps to prevent threats to human health and the environment, and:

a. the permit holder demonstrates that the activities required to comply with this Subsection will, of necessity, take longer than specified to complete; or

b. the facility has the capacity to receive additional wastewater; and

c. there is a reasonable likelihood that the facility will recommence operation; and

d. closure of the facility would be incompatible with continued operation of the site.

P. Corrective Action (Additional Closure Activities). If levels of contamination in the underlying and surrounding soils and/or groundwater at the time of closure exceed the approved RECAP standards as specified in Subsection G of this Section, the permit holder shall enter into a cooperative agreement with the administrative authority as provided in LAC 33:VI.703 to perform corrective action (i.e., additional closure activities including site investigation, remedial investigation, corrective action study, and/or remedial action), as the administrative authority may deem necessary, in accordance with LAC 33:VI.

1. Financial assurance for closure in accordance with Subsection J of this Section shall be maintained by the permit holder until the cooperative agreement is effective.

2. As provided for in LAC 33:VI.703.E.5, the cooperative agreement may contain a provision for “assurance of financial ability to complete work” by the permit holder. Accordingly, the administrative authority shall evaluate whether financial assurance will be required for corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality,

Office of the Secretary, Legal Affairs Division, LR 34:**.

Chapter 17. ~~Rules Governing Disposal of Waste Oil, Oil Field Brine, and All Other Materials Resulting from the Drilling for, Production of, or Transportation of Oil, Gas or Sulfur (As Amended January 27, 1953)~~Financial Assurance

NOTE: Former Chapter 17 has been repealed.

~~§1701. Adopted by the Stream Control Commission, State of Louisiana, under Authority of Section 1435, Chapter 3, Part I, of Title 56, Louisiana Revised Statutes of 1950~~Financial Assurance Requirements

NOTE: Former §1701 has been repealed.

A. ~~Crude oil, waste oil, oil sludge, oil water emulsion, or oil bearing mixtures of any kind shall be gathered and destroyed by burning or otherwise on the lease where the wastes originate, and in such manner as to eliminate any pollution hazard.~~

B. ~~No oily fluids shall be discharged to, or allowed to flow on the ground, or be carried from the original lease in open ditches, or discharged or allowed to flow into any stream, lake or other body of water.~~

C. ~~Each producing well, except those over marsh and water, all oil booster pumps, and any pump used to move oil or oily fluids, shall be provided with a surrounding gathering ditch or equally effective device, to prevent the escape of oily wastes from the location, such ditch to be graded to a gathering sump which shall be cleaned regularly by removal and destruction of oily wastes. All spillage of oil shall be promptly gathered and destroyed.~~

1. ~~On all pumping wells, over water or marsh, there shall be installed an adequate impervious deck or other device with catch tank installed around the wellhead. The catch tank should be equipped with a "stiff leg" to enable the operator to dispose of excess rainfall.~~

2. ~~All drilling barges, whether for workover or drilling new wells shall be equipped with a device at the open end or ends of keyways to prevent oil or oil fluids from escaping therefrom. This device shall be so installed as to be adjustable for tidal changes and all oil collected within keyways shall be picked up and disposed of in compliance with LAC 33:IX.1701.C.1 and 2.~~

3. ~~All barges containing drilling, workover or power units shall be equipped with a coaming or other device as to drain all oil or oily fluids into a catch tank.~~

4. ~~All necessary steps shall be taken to avoid loss of oil during workover operation.~~

D. ~~Each permanent oil tank or battery of tanks that are located within the corporate limits of any city, town, or village or where such tanks are closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church, or where such tanks are so located as to be deemed a hazard by the Stream Control Commission, must be surrounded by a dike (or fire wall) or retaining wall, of at least the capacity of such tank or battery of tanks, with the exception of such areas where such dikes (or fire walls) or retaining walls would be impossible such as in water areas. At the discretion of the Stream Control Commission, fire walls of 100 percent capacity can be required where other conditions or circumstances warrant their construction. (As amended December 13, 1963.) Tanks not falling in the above categories must be surrounded by a retaining wall, or must be suitably ditched to a collecting sump, each of sufficient capacity to contain the spillage and prevent pollution of the surrounding areas.~~

E.—— Oil gathering lines, or any other lines used for transporting oil, shall be regularly inspected and all leaks shall be immediately repaired. Waste from leaks shall be collected and destroyed immediately upon discovery. All barges used for the transportation of crude oil or petroleum products shall be in first class condition. Leaking barges shall be repaired before reuse. Loading racks, barge loading outlets, and similar installations shall be operated at all times with full precaution against spillage. Such installations shall be surrounded by a ditch graded to a gathering sump, or shall be provided with an impervious deck surrounded by a steel gutter leading to a sump, or with such other equipment adequate for the accomplishment of the same purpose as may be approved by the Stream Control Commission. All such gathering sumps shall be cleared regularly by removal and destruction or other safe disposal of the oily waste. After each operation of barge or tanker loading equipment, loading hose and connections shall be carefully drained, and the gathering sumps shall be emptied, preferably to the barge or tanker.

F.—— No salt water shall be discharged from a lease until all oily waste has been completely separated therefrom, except in cases where the transfer of such salt water from the lease to a central treating plant has been approved in writing by the Stream Control Commission or one of its agents. Separating pits or other equally effective device, for the separation of oily wastes from oil field brine shall be constructed and operated in such a manner that no oily waste will be carried from the lease, except to central treating plants, and shall meet any reasonable minimum requirements set up in any particular field or lease by the Stream Control Commission. In oil field brines discharged to streams the oil content shall not exceed 30 ppm.

G.—— No oil field brine shall be discharged into any stream, lake or other body of water, or into any ditch or surface drainage leading to any stream, lake or other body of water, when it is determined by the Stream Control Commission that such discharge would adversely affect the palatability of a source of potable water to an appreciable degree, or would be deleterious to the public health, or to the prosecution of an industry or lawful occupation for which or in which any such waters may be lawfully used or employed, or whereby the carrying on of any agricultural pursuit may be injuriously affected or whereby the lawful conduct of any livestock industry or the use of any such waters for domestic animals may be prevented, injuriously affected or impaired, or whereby any lawful use of any such waters by the state of Louisiana, or by any political subdivision, or by any corporation, association, partnership, or person, or any other legal entity may be lessened or impaired, or materially interfered with, or whereby any fish life, or any beneficial animal or vegetable life in said waters may be destroyed, or the growth or propagation thereof prevented or injuriously affected; provided that oil-free brine may be discharged under maximum dilution ratios prescribed for any particular stream or field by the Stream Control Commission, or during any particular period in which such discharge is determined by the commission to be free from pollution hazard, or necessary in the public interest.

H.—— Wherever possible, disposition of oil field brine shall be accomplished by discharge through disposal wells to underground horizons below the fresh water level, such wells to be so drilled, cased, cemented, equipped, and operated that no fresh water horizon shall be polluted; provided that this rule shall not apply in fields or areas where it is determined by the Stream Control Commission that disposition of the brine is or may be accomplished by discharge into water bodies normally or seasonably sufficiently saline to preclude any actual or potential pollution hazard due to such discharge.

A.—— Purpose and Applicability. The purpose of this Chapter is to establish the financial assurance (the word *security* may be used interchangeably with *assurance*) requirements for:

1. privately-owned sewage treatment facilities regulated by the Public

Service Commission during operation;

2. centralized waste treatment facilities (CWTs) treating exploration and production (E&P) waste during operation and closure;

3. commercial preparers of sewage sludge, for meeting the requirements applicable during operation and closure; and

4. commercial land applicers of biosolids during operation and closure.

B. This Chapter shall be applicable to the entities listed in Subsection A of this Section when the following actions are taken by the department:

1. issuance of a new discharge permit;

2. renewal of an existing discharge permit;

3. modification of an existing discharge permit; and

4. transfer of an existing discharge permit to a different permittee.

C. Without first obtaining financial security pursuant to LAC 33:IX.1705, no privately-owned sewage treatment facility regulated by the Public Service Commission shall be issued an LPDES permit.

D. All instruments used in this Chapter shall be submitted in the following manner.

1. The instrument shall be addressed to the Office of Environmental Services.

2. The original instrument shall be submitted.

3. The instrument shall be accompanied with a cover letter identifying the facility, agency interest number, and any other identifying information deemed necessary by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§1703. Definitions

A. Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

Closure—the act of securing a facility that has been used to process, store, or dispose of waste from the affected entities in a manner that minimizes harm to the public and the environment.

Commercial Land Applier of Biosolids—any person who applies biosolids to the land for monetary profit or other financial consideration when the biosolids have been obtained from a facility or facilities not owned by or associated with the person.

Commercial Preparer of Sewage Sludge—any person who prepares sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration when the person was not the generator of the sewage sludge and the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§1705. Financial Assurance for Privately-Owned Sewage Treatment Facilities

A. Amount of Financial Security Required for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately owned sewage treatment facilities must provide financial assurance as follows.

1. The amount of the financial security must be equal to or greater than \$1 per gallon of wastewater discharged per day from the facility, as determined by the administrative authority, up to a maximum of \$25,000.

2. The secretary may, at his discretion, allow a single financial security instrument to satisfy the requirements of this Chapter for up to four permits held by the same permittee, if the amount of financial security provided by that instrument is large enough to satisfy the requirements of Paragraph A.1 of this Section for the facility with the greatest amount of wastewater discharged per day.

B. Acceptable Form of Financial Security. Financial security required by R.S. 30:2075.2 may be established by a surety bond and/or a letter of credit, in combination with a standby trust fund, as provided in Paragraphs B.1-3 of this Section. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority.

1. Surety Bond. The requirements of this Section may be satisfied by obtaining a surety bond that conforms to all of the following requirements.

a. The bond must be executed by the permittee and a corporate surety licensed to do business in Louisiana. The surety must, at a minimum, be among those listed as acceptable sureties on federal bonds in the most current version of Circular 570 of the U.S. Department of the Treasury and be approved by the administrative authority.

b. The bond must be submitted to the Louisiana Department of Environmental Quality, Office of Environmental Services.

c. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

d. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Louisiana Department of Environmental Quality, Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

e. A standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the surety bond, into which the proceeds of the surety bond could be transferred should such funds be necessary for continued operation of the facility, and a signed copy of the standby trust agreement must be furnished to the administrative authority with the surety bond. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1705.B.3.

f. The wording of the surety bond must be identical to the following, except that material in brackets is to be replaced with the relevant information, and the brackets deleted.

FINANCIAL GUARANTEE BOND

Date bond executed: _____
Effective date: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

Agency Identification Number, name, address, and amounts for operation and maintenance and/or correction of deficiencies for each facility guaranteed by this bond [indicate operation and maintenance amounts and/or correction of deficiency amounts separately]:

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., to have a permit in order to own or operate the facility(ies) identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for correction of deficiencies at the facility and/or for maintenance and operation of the facility, as a condition of the permit or interim status; and

WHEREAS, said Principal shall establish a standby trust fund, as is required by LAC 33:IX.1705.B.1.e, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, as directed by the administrative authority, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after the Secretary, or a court of competent jurisdiction, finds that the facility is in forfeiture of financial security due to noncompliance,

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the administrative authority.

The Surety(ies) hereby waives notification of amendments to permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of notice of cancellation by the Principal and the administrative authority, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) and to the administrative authority, provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the administrative authority.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.1705.A, and the conditions of the permit so that it guarantees a new amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety(ies) hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety(ies), that each Surety hereto

is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.1705.B.1.f as such regulations were constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETIES
[Name and Address]
State of incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[This information must be provided for each
cosurety.]
Bond Premium: \$ _____

2. Letter of Credit. The requirements of this Section may be satisfied by obtaining a letter of credit that conforms to the following requirements.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

b. The letter of credit must be submitted to the Louisiana Department of Environmental Quality, Office of Environmental Services.

c. The letter of credit must be irrevocable and issued for a period of at least one year, unless at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority have received the notice, as evidenced by the return receipts.

d. A standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the letter of credit, into which the proceeds of the letter of credit could be transferred should such funds be necessary for continued operation of the facility, and a signed copy of the standby trust agreement must be furnished to the administrative authority with the letter of credit. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1705.B.3.

e. The wording of the letter of credit shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Office of Environmental Services
[insert appropriate division name]
Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the conditions specified in LAC 33:IX.1705 for its [list site identification number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:

(1). _____ A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(2). _____ A statement, signed by the administrative authority, declaring that the amount of the draft is payable pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.1705.B.2.e, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

3. _____ Standby Trust Fund. The wording of the standby trust agreement that is required by Subparagraphs B.1.e and B.2.d of this Section shall be as follows, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

PRIVATELY-OWNED SEWAGE TREATMENT FACILITY

STANDBY TRUST AGREEMENT

This Standby Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of affected person], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of state]" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the Grantor, requiring that an affected person shall provide assurance that funds will be available when needed for operation and maintenance of the facility or to correct deficiencies at the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

- (a). The term "Grantor" means the affected person who enters into this Agreement and any successors or assigns of the Grantor.
- (b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.
- (c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.
- (d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amounts for operation and maintenance and/or correction of deficiencies, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a standby trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CONTINUED OPERATION

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of correcting deficiencies at the facility or of the costs of continued operation of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for these expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

- (a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15

U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission,

made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the State of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Louisiana Administrative Code (LAC), Title 33, Part IX.1705.B.3, on the date first written above.

WITNESSES:

GRANTOR:

By: _____
Its: _____
[Seal]

TRUSTEE:

By: _____
Its: _____
[Seal]

THUS DONE AND PASSED in my office in _____, on the
_____ day of _____, 20_____, in the presence of
_____ and _____, competent witnesses, who hereunto sign their
names with the said appearers and me, Notary, after reading the whole.

Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____, before me,
the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and
in the presence of the witnesses hereinafter named and undersigned, personally came and appeared
_____, to me well known, who declared and acknowledged that he had signed and
executed the foregoing instrument as his act and deed, and as the act and deed of the
_____, a corporation, for the consideration, uses, and purposes and on terms and
conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the
_____ of said corporation and that he signed and executed said instrument in his said capacity,
and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove
written, and in the presence of _____ and _____, competent witnesses, who

have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

NOTARY PUBLIC

C. Conditions for Forfeiture. The secretary or his designee may enter an order requiring forfeiture of all or part of the financial security if he determines that:

1. the continued operation or lack of operation and maintenance of the facility covered by this Section represents a threat to public health, welfare, or the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such determination includes, but is not limited to:

a. the discharge of pollutants or the land application of biosolids exceeding limitations imposed by applicable permits;

b. the failure to utilize or maintain adequate disinfection facilities for privately-owned sewage treatment facilities;

c. failure to correct overflows or backups from the collection system for privately-owned sewage treatment facilities;

d. a declaration of a public health emergency by the state health officer; and

e. a determination by the Public Service Commission that a permitted privately-owned sewage treatment facility is financially unable to properly operate or maintain the system;

2. reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and

3. it does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.

D. Use of Proceeds. The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system, as deemed necessary by the secretary under Subsection C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§1707. Liability Insurance Requirements for Commercial Preparers of Sewage Sludge, Commercial Land Appliers of Biosolids, and Centralized Waste Treatment Facilities That Treat E&P Waste

A. Commercial preparers of sewage sludge, commercial land appliers of biosolids, and CWTs that treat E&P waste, hereinafter referred to in this Section as *affected persons*, have the following financial responsibilities while their facilities are in operation.

1. All affected persons shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million

annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Commercial preparers of sewage sludge and commercial land applicators of biosolids are exempt from these requirements if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the following mechanisms.

a. Insurance. Evidence of liability insurance may consist of either a signed duplicate original of a liability endorsement in favor of the affected person, or a certificate of insurance. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.1799.Appendix A, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.1799.Appendix B, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. All liability endorsements and certificates of insurance must include:

- i. a statement of coverage relative to environmental risks;
- ii. a statement of all exclusions to the policy; and
- iii. a certification by the insurer that the insurance afforded

with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with Subclauses A.1.a.iii.(a)-(f) of this Section are amended to conform with said Subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subparagraphs A.1.b-d of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

b. Letter of Credit. An affected person may satisfy the requirements of this Subsection by obtaining an irrevocable letter of credit that conforms to all of the following requirements and submitting the letter to the administrative authority.

i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

ii. The affected person who uses a letter of credit to satisfy the

requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

iii. The letter of credit must be accompanied by a letter from the affected person referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

- (a). the agency interest number;
- (b). the site name, if applicable;
- (c). the facility name;
- (d). the facility permit number; and
- (e). the amount of funds assured for liability coverage of

the facility by the letter of credit.

iv. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the affected person and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the affected person and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

v. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.1799.Appendix C, except that the instructions in brackets are to be replaced with the relevant information (i.e., type of affected person), and the brackets deleted.

c. Financial Test

i. To meet this test, the affected person or parent corporation (corporate guarantor) of the affected person must submit to the Office of Environmental Services the documents required by LAC 33:IX.1709.C.8 demonstrating that the requirements of LAC 33:IX.1709.C.8 have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the affected person or parent corporation (corporate guarantor). If the affected person or parent corporation is using the financial test to demonstrate liability coverage and closure, only one letter from the chief financial officer is required.

ii. The assets of the parent corporation of the affected person shall not be used to determine whether the affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subparagraph A.1.d of this Section.

iii. The wording of the financial test shall be as specified in LAC 33:IX.1709.C.8.d.

d. Corporate Guarantee

i. An affected person may meet the requirements of Paragraph A.1 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the

administrative authority specified in LAC 33:IX.1709.C.8.b and d. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

(a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in LAC 33:IX.1709.C.8;

(b). the guarantor is the parent corporation of the affected person to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). if the affected person fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

(d). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the affected person, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the affected person, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the affected person has done so;

(e). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

(f). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the affected person unless the affected person has done so;

(g). the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the affected person in accordance with these regulations;

(h). the guarantor agrees to remain bound under the guarantee for as long as the affected person must comply with the applicable financial assurance requirements of LAC 33:IX.1709.C for the facilities covered by the guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the affected person. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts;

(i). the guarantor agrees that if the affected person fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the affected person;

(j). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the affected person. The guarantor also expressly waives notice of amendments or modifications of the facility permit; and

(k). the wording of the corporate guarantee shall be as specified in LAC 33:IX.1709.C.8.i.

ii. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general or insurance commissioner of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.

2. The use of a particular financial assurance mechanism is subject to the approval of the administrative authority.

3. Affected persons must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other materials, feedstock, or supplements are first received for processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§1709. Financial Assurance for Closure for Commercial Preparers of Sewage Sludge, Commercial Land Appliers of Biosolids, and CWTs That Treat E&P Waste

A. This Section applies only to commercial preparers of sewage sludge, commercial land appliers of biosolids, and CWTs that treat E&P waste, hereinafter referred to in this Section as *affected persons*. All submittals shall be in accordance with the instructions in LAC 33:IX.1701.D.

B. Commercial preparers of sewage sludge and commercial land appliers of biosolids shall maintain financial assurance in the amount of \$25,000 per site for closure if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the methods in Paragraph C.2 of this Section. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.

C. All affected persons, except as specified in Subsection B of this Section, shall establish and maintain financial assurance for closure in accordance with LAC 33:IX.715.J and 7305.C.4, and shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure in accordance with the following requirements.

1. The affected person must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these regulations. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

a. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared, on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business*, or a re-estimation of the closure costs in accordance with Paragraph C.1 of this Section. The affected person must revise the cost estimate whenever a change in the closure plan increases or decreases the cost of the closure plan. The affected person must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

b. For trust funds, the first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure cost estimate and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Instruments. The financial assurance instrument must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism, into which the proceeds of such mechanism could be transferred should such funds be necessary for closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. An affected person may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within the state of Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanisms must equal the total of the current closure cost estimate for each facility covered.

d. When all closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanisms.

3. Trust Funds. An affected person may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally-signed duplicate of the trust agreement to the Office of Environmental Services.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of the State of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the affected person upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the affected person.

e. The affected person may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. However, the affected person must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subparagraph C.1.b of this Section.

f. If the affected person establishes a trust fund after having used one or more of the alternate instruments specified in this Section, the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of Subparagraph C.1.b of this Section.

g. After the pay-in period is completed, whenever the current cost estimate changes, the affected person must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the affected person, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, an affected person or any other person authorized by the affected person to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and, if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the affected person is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

4. Surety Bonds. An affected person may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

b. The affected person who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby

trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

- c. The bond must guarantee that the affected person will:
 - i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;
 - ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued; or
 - iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided, within 90 days after receipt by both the affected person and the administrative authority of a notice of cancellation of the bond from the surety.
- d. The terms of the bond must provide that the surety will become liable on the bond obligation when the affected person fails to perform as guaranteed by the bond.
- e. The penal sum of the bond must be at least equal to the current closure cost estimate.
- f. Whenever the current cost estimate increases to an amount greater than the penal sum, the affected person, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.
- g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the affected person and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the affected person and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.
- h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:IX.1799.Appendix E, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

5. Performance Bonds. An affected person may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

- a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.
- b. The affected person who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the

example in LAC 33:IX.1799.Appendix D.

- c. The bond must guarantee that the affected person will:
 - i. perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or
 - ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided, within 90 days after the date both the affected person and the administrative authority receive notice of cancellation of the bond from the surety.
- d. The terms of the bond must provide that the surety will become liable on the bond obligation when the affected person fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the affected person has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.
- e. The penal sum of the bond must be at least equal to the current closure cost estimate.
- f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the affected person, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.
- g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the affected person and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed, beginning on the date that both the affected person and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.
- h. The wording of the performance bond shall be identical to the wording in LAC 33:IX.1799.Appendix F, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.
- 6. Letter of Credit. An affected person may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.
 - a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.
 - b. The affected person who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

c. The letter of credit must be accompanied by a letter from the affected person referring to the letter of credit by number, issuing institution, and date, and providing the following information:

- i. the agency interest number;
- ii. the site name, if applicable;
- iii. the facility name;
- iv. the facility permit number; and
- v. the amount of funds assured for closure of the facility by

the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the affected person and the Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the affected person and the administrative authority have received the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure cost estimate.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the affected person, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the affected person has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.1799.Appendix G, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

7. Insurance. An affected person may satisfy the requirements of this Subsection by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in the State of Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure cost estimate.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative

authority specifies.

e. After beginning final closure, an affected person or any other person authorized by the affected person to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The affected person must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the affected person.

g. Each policy must contain a provision allowing assignment of the policy to a successor of an affected person. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the affected person and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the affected person have received the notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

i. the administrative authority deems the facility abandoned;

ii. the permit is terminated or revoked or a new permit is

denied;

iii. closure is ordered;

iv. the affected person is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the affected person, within 60 days after the increase, must either increase the face amount to at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in LAC 33:IX.1799.Appendix H, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

8. Financial Test. An affected person or a parent corporation of the affected person, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that a financial test as specified in this Paragraph is met. The assets of the parent corporation of the affected person shall not be used to determine whether the affected person satisfies the financial test, unless the parent corporation has supplied a corporate

guarantee as outlined in LAC 33:IX.1707.A.1.d and/or Subparagraph C.8.i of this Section.

a. To pass this test, the affected person or parent corporation of the affected person must meet either of the following criteria:

i. the affected person or parent corporation of the affected person has:

(a). tangible net worth of at least six times the sum of the current closure cost estimate to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either at least 90 percent of its total assets, or at least six times the sum of the current closure cost estimate, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the affected person or parent corporation of the affected person has:

(a). a current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either 90 percent of its total assets or at least six times the sum of the current closure cost estimate, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that this test is met, the affected person or parent corporation of the affected person must submit the following three items to the Office of Environmental Services:

i. a letter signed by the chief financial officer of the affected person or parent corporation demonstrating and certifying the criteria in Subparagraph C.8.a of this Section and including the information required by Subparagraph C.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and liability coverage, a single letter to cover both forms of financial assurance is required;

ii. a copy of the report of the independent certified public accountant (CPA) on the financial statements of the affected person or parent corporation of the affected person for the latest completed fiscal year; and

iii. a special report from the independent CPA to the affected person or parent corporation of the affected person stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor) or affected person. The

affected person or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The affected person or parent corporation (if a corporate guarantor) of the affected person shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:IX.1799.Appendix I, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The letter shall certify the following information:

i. a list of facilities, whether in the state of Louisiana or not, owned or operated by the affected person of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of facilities, whether in the state of Louisiana or not, owned or operated by the affected person, for which financial assurance for closure is demonstrated through the use of a financial test or self-insurance by the affected person, including the cost estimates for the closure of each facility;

iii. a list of the facilities, whether in the state of Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of facilities, whether in the state of Louisiana or not, for which financial assurance for closure is not demonstrated through the financial test, self-insurance, or other substantially equivalent state instruments, including the estimated cost of closure of such facilities.

e. For the purposes of this Subsection the phrase *tangible net worth* shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase *current closure cost estimate*, as used in Subparagraph C.8.a of this Section, includes the cost estimate required to be shown in Subclause C.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subparagraph C.8.b of this Section, the affected person or parent corporation of the affected person must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subparagraph C.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the affected person or parent corporation of the affected person may no longer meet the requirements of this Paragraph, require reports of financial condition at any time in addition to those specified in Subparagraph C.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the affected person or parent corporation of the affected person no longer meets the requirements of Subparagraph C.8.b of this Section, the affected person or parent corporation of the affected person must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. An affected person may meet the requirements of this Paragraph for closure by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The

guarantor must be the parent corporation of the affected person. The guarantor must meet the requirements and submit all information required for affected persons in Subparagraphs C.8.a-h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs C.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.1799.Appendix J, except that instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subparagraphs C.8.b and d of this Section;

ii. the guarantor is the parent corporation of the affected person of the facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. closure plans, as used in the guarantee, refers to the plans maintained as required by the state of Louisiana regulations for the closure of facilities, as identified in the guarantee;

iv. for value received from the affected person, the guarantor guarantees to the Office of Environmental Services that the affected person will perform closure of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the affected person fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph C.3 of this Section, in the name of the affected person, in the amount of the current closure cost estimate or as specified in Subparagraph C.1.b of this Section;

v. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the affected person that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the affected person, and that within 120 days after the end of such fiscal year, the guarantor will establish such financial assurance unless the affected person has done so;

vi. the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure, the guarantor will establish alternate financial assurance as specified in this Subsection in the name of the affected person, unless the affected person has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure, or any other modification or alteration of an obligation of the affected person in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the affected person must comply with the applicable financial assurance requirements of this Subsection for the facilities covered by the corporate guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the affected person. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts;

x. the guarantor agrees that if the affected person fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the affected person; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the affected person. The guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit.

9. Local Government Financial Test. An affected person that is a local government and that satisfies the requirements of Subparagraphs C.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph C.9.d of this Section.

a. Financial Component

i. The affected person must satisfy the following conditions, as applicable:

(a). if the affected person has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b). the affected person must have a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05 and a ratio of annual debt service to total expenditures less than or equal to 0.20 based on the affected person's most recent audited annual financial statement.

ii. The affected person must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have the financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under this Paragraph if it:

(a). is currently in default on any outstanding general obligation bonds;

(b). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Clause C.9.a.ii of this Section. The

administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Paragraph are defined as follows.

(a). Deficit—total annual revenues minus total annual expenditures.

(b). Total Revenues—revenues from all taxes and fees, but not including the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c). Total Expenditures—all expenditures, excluding capital outlays and debt repayment.

(d). Cash Plus Marketable Securities—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e). Debt Service—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government affected person must place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure requirements, the reported liability at the balance sheet date, the estimated total closure cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government affected person must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subparagraph C.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses C.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses C.9.a.i-iii and Subparagraphs C.9.b and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years, and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant, or the appropriate state agency, based on performing an agreed-upon procedures engagement relative to the financial ratios required by Subclause C.9.a.i.(b) of this Section, if applicable, and the requirements of Clause C.9.a.ii and Subclauses C.9.a.iii.(c)-(d) of this Section. The report by the certified public accountant or state agency should state the procedures performed and the findings of the certified public accountant or state agency; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph C.9.b of this Section (evidence that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Clause C.9.c.i of this Section must be placed in the facility operating record, in the case of closure, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government affected person must update the information and place the updated information in the operating record within 180 days following the close of the affected person's fiscal year.

iv. The local government affected person is no longer required to meet the requirements of Clause C.9.c.iii of this Section when:

(a). the affected person substitutes alternate financial assurance, as specified in this Section; or

(b). the affected person is released from the requirement of maintaining financial assurance in accordance with this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government affected person no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the its fiscal year, obtain alternate financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the affected person no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government affected person may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the affected person no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure and corrective action costs that a local government affected person can assure under Paragraph C.9 of this Section is determined as follows:

i. if the local government affected person does not assure other environmental obligations through a financial test, it may assure closure and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, or hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or any applicable corresponding state programs, it must add those costs to the closure and corrective action costs it seeks to assure under this Paragraph, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the affected person must obtain an alternate financial assurance instrument for those costs that exceed the limits set in this Subparagraph.

10. Local Government Guarantee. An affected person may demonstrate financial assurance for closure, as required by this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Paragraph C.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure. The guarantee must provide that:

i. if the affected person fails to perform closure of a facility covered by the guarantee, the guarantor will:

(a). perform closure, or pay a third party to perform closure; or

(b). establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the affected person; and

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the affected person and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the affected person and the administrative authority, as evidenced by the return receipts. If a guarantee is canceled, the affected person must, within 90 days following receipt of the cancellation notice by the affected person and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the affected person fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.

b. Recordkeeping and Reporting

i. The affected person must place a certified copy of the guarantee, along with the items required under Subparagraph C.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later.

ii. The affected person is no longer required to maintain the items specified in Clause C.10.b.i of this Section when:

(a). the affected person substitutes alternate financial assurance as specified in this Section; or

(b). the affected person is released from the requirement of maintaining financial assurance in accordance with this Section.

iii. If a local government guarantor no longer meets the requirements of Paragraph C.9 of this Section, the affected person must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the affected person fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Instruments. An affected person may demonstrate financial assurance for closure and corrective action, as required by this Section, by establishing

more than one financial mechanism per facility, except that instruments guaranteeing performance, rather than payment, may not be combined with other instruments. The instruments must be as specified in Paragraphs C.3-8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure and/or corrective action may be provided by a combination of instruments, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the affected person has submitted a statement from a registered professional engineer to the Office of Environmental Services so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the affected person certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates are adjusted annually to reflect inflation and years of remaining life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§1711. Incapacity of Owners or Operators, Guarantors, or Financial Institutions

A. All persons subject to this Chapter must notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the person as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in LAC 33:IX.1707.A.1.d or 1709.C.8.i must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee set forth in LAC 33:IX.1799.Appendix J.

B. A person who fulfills the requirements of LAC 33:IX.1707 or 1709 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The person must establish other financial assurance or liability coverage within 60 days after such an event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§1799. Financial Assurances Documents—Appendices A, B, C, D, E, F, G, H, I, and J

NOTE: Within this Section, *affected person* means an owner or operator of a centralized waste treatment facility (CWT) that treats exploration and production (E&P) waste, a commercial

preparer of sewage sludge, or a commercial land applier of biosolids, as applicable.

A. Appendix A—Liability Endorsement

[Insert, as applicable: “CENTRALIZED WASTE TREATMENT FACILITY,”
“COMMERCIAL PREPARER OF SEWAGE SLUDGE,” or “COMMERCIAL LAND
APPLIER OF BIOSOLIDS”]

LIABILITY ENDORSEMENT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be the affected person or the operator. (Note: The operator will provide the liability-insurance documentation only when the affected person is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial assurance is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.1701.A. The coverage applies at [list site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in LAC 33:IX.1707.A.1.b-d.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.1799.Appendix A, effective on the date first written above and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the State of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]

[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

B. Appendix B—Certificate of Insurance

[Insert, as applicable: "CENTRALIZED WASTE TREATMENT FACILITY,"
 "COMMERCIAL PREPARER OF SEWAGE SLUDGE," or "COMMERCIAL LAND
 APPLIER OF BIOSOLIDS"]

CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the affected person or the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial assurance under Louisiana Administrative Code (LAC), Title 33, Part IX.1701.A. The coverage applies at [list agency interest number(s), site name(s), facility name(s), facility permit number(s), and site address(es)] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in LAC 33:IX.1707.A.1.b-d.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.1799.Appendix B, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the State of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

C. Appendix C—Letter of Credit

[Insert, as applicable: “CENTRALIZED WASTE TREATMENT FACILITY,”
“COMMERCIAL PREPARER OF SEWAGE SLUDGE,” or “COMMERCIAL LAND
APPLIER OF BIOSOLIDS”]

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [affected person's name and address] for its [list site identification number(s), site name(s), facility name(s), and facility permit number(s)] at [location(s)]. Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [affected person's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to operations by the affected person at [site location(s)] as set forth in the *Louisiana Administrative Code (LAC)*, Title 33, Part IX.1701.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of affected person] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of affected person] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of affected person] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.1799.Appendix C, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

D. Appendix D—Trust Agreement

[Insert, as applicable: “CENTRALIZED WASTE TREATMENT FACILITY,”
“COMMERCIAL PREPARER OF SEWAGE SLUDGE,” or “COMMERCIAL LAND
APPLIER OF BIOSOLIDS”]

TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of affected person], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of state]" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the Grantor, requiring that an affected person shall provide assurance that funds will be available when needed for closure of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the affected person who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CLOSURE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims or closure care] of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon

refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance

with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the State of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code (LAC)*, Title 33, Part IX.1799.Appendix D, on the date first written above.

WITNESSES:

GRANTOR:

By: _____
Its: _____
[Seal]

TRUSTEE:

By: _____
 Its: _____
 [Seal]

THUS DONE AND PASSED in my office in _____, on the
 _____ day of _____, 20_____, in the presence of
 _____ and _____, competent witnesses, who hereunto
 sign their names with the said appearers and me, Notary, after reading the whole.

 Notary Public

(The following is an example of the certification of acknowledgement that must accompany the
trust agreement.)

STATE OF LOUISIANA
 PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____,
 before me, the undersigned Notary Public, duly commissioned and qualified within the State and
 Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned,
 personally came and appeared _____, to me well known, who declared and
 acknowledged that he had signed and executed the foregoing instrument as his act and deed, and
 as the act and deed of the _____, a corporation, for the consideration, uses, and
 purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the
 _____ of said corporation and that he signed and executed said instrument in his said
 capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first
 hereinabove written, and in the presence of _____ and _____,
 competent witnesses, who have hereunto subscribed their name as such, together with said
 appearer and me, said authority, after due reading of the whole.

WITNESSES:

NOTARY PUBLIC

E. Appendix E—Surety Bond

[Insert, as applicable: "CENTRALIZED WASTE TREATMENT FACILITY,"
 "COMMERCIAL PREPARER OF SEWAGE SLUDGE," or "COMMERCIAL LAND
 APPLIER OF BIOSOLIDS"]

FINANCIAL GUARANTEE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of affected person]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure
 amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are

firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically 2074(B)(4), to have a permit in order to own or operate the [insert type of permit] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the Louisiana Administrative Code (LAC), Title 33, Part IX.1709.C.4.b, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.1707 or 1709 and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.1709.C.4.f and the conditions of the permit so that it guarantees a new closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to

execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.1799.Appendix E, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETIES

[Name and Address]

State of incorporation: _____

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[This information must be provided for each cosurety.]

Bond Premium: \$ _____

F. Appendix F—Performance Bond

[Insert, as applicable: "CENTRALIZED WASTE TREATMENT FACILITY," "COMMERCIAL PREPARER OF SEWAGE SLUDGE," or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of affected person]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure amount(s) for each facility guaranteed by this bond (indicate closure costs separately)]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically 2074(B)(4), to have a permit in order to own or operate the [insert type of permit] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a

surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.1709 and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.7305.C.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.1709.C.5.c.ii, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.1709.C.4.f and the conditions of the permit so that it guarantees a new closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.1799.Appendix F, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY

[Name and address]

State of incorporation: _____

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every cosurety, provide signature(s),
corporate seal, and other information in the
same manner as for Surety above.]

Bond premium: \$ _____

G. Appendix G—Letter of Credit

[Insert, as applicable: “CENTRALIZED WASTE TREATMENT FACILITY,”
“COMMERCIAL PREPARER OF SEWAGE SLUDGE,” or “COMMERCIAL LAND
APPLIER OF BIOSOLIDS”]

IRREVOCABLE LETTER OF CREDIT

Secretary

Louisiana Department of Environmental Quality

Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

Attention: _____ Office of Environmental Services

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of
the Department of Environmental Quality of the State of Louisiana at the request and for the
account of [affected person's name and address] for the closure fund for its [list agency interest
number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or
sums up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:

(i). _____ A sight draft, bearing reference to the Letter of Credit No. _____
drawn by the administrative authority, together with:

(ii). _____ A statement, signed by the administrative authority, declaring that the
amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental
Quality Act, R.S. 30:2001 et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration
date will be automatically extended for a period of at least one year on the above expiration date
[date] and on each successive expiration date thereafter, unless, at least 120 days before the then-
current expiration date, we notify both the administrative authority and [name of affected person]
by certified mail that we have decided not to extend this Letter of Credit beyond the then-current
expiration date. In the event that we give such notification, any unused portion of this Letter of
Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt
by both the Department of Environmental Quality and [name of affected person], as shown on the
signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this
credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of
the draft directly into the standby trust fund of [name of affected person] in accordance with the
administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert “the most recent edition of
the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the
International Chamber of Commerce,” or “the Uniform Commercial Code”] shall apply to this

Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in Louisiana Administrative Code (LAC), Title 33, Part IX.1799.Appendix G, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

H. Appendix H—Certificate of Insurance

[Insert, as applicable: “CENTRALIZED WASTE TREATMENT FACILITY,”
“COMMERCIAL PREPARER OF SEWAGE SLUDGE,” or “COMMERCIAL LAND
APPLIER OF BIOSOLIDS”]

CERTIFICATE OF INSURANCE FOR CLOSURE

Name and Address of Insurer: _____

(hereinafter called the "Insurer")

Name and Address of Insured: _____

(hereinafter called the "Insured")

(Note: Insured must be the affected person.)

Facilities covered:

[list agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure] (These amounts for all facilities must total the face amount shown below.)

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.1707.A.1.a or 1709.C.7, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the State of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.1799.Appendix H, effective on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

I. Appendix I—Letter from the Chief Financial Officer

[Insert, as applicable: “CENTRALIZED WASTE TREATMENT FACILITY,”
“COMMERCIAL PREPARER OF SEWAGE SLUDGE,” or “COMMERCIAL LAND
APPLIER OF BIOSOLIDS”]

LETTER FROM THE CHIEF FINANCIAL OFFICER

(LIABILITY COVERAGE, CLOSURE)

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the affected person or parent corporation of the affected person]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for [insert "liability coverage," and/or "closure," as applicable] as specified in Louisiana Administrative Code (LAC), Title 33, Part IX, [insert "1707.A.1.c", "1709.C.8", or "1707.A.1.c and 1709.C.8"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "affected person," or "parent corporation of the affected person"], whether in the State of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.1707.A.1.c. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "affected person" or "parent corporation of the affected person"], whether in the State of Louisiana or not, for which financial assurance for closure, is demonstrated through a financial test similar to that specified in LAC 33:IX.1709.C.8 or other forms of self-insurance. The current closure cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "1707.A.1.d", "1709.C.8.i", or "1707.A.1.d and 1709.C.8.i"], [insert "liability coverage," and/or "closure,"], whether in the State of Louisiana or not, of which [insert the name of the affected person] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following facilities, whether in the State of Louisiana or not, for which financial assurance for liability coverage and/or closure is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.1707 and/or 1709. The current closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently-audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.1709.C.8.a.i are used.]

| Alternative I | |
|--|-----------------|
| <u>1. Amount of annual aggregate liability coverage to be demonstrated</u> | <u>\$ _____</u> |

| Alternative I | | |
|--|------------|-----------|
| *2. Current assets | \$ _____ | |
| *3. Current liabilities | \$ _____ | |
| *4. Tangible net worth | \$ _____ | |
| *5. If less than 90 percent of assets are located in the U.S., give total U.S. assets | \$ _____ | |
| | <u>YES</u> | <u>NO</u> |
| 6. Is line 4 at least \$10 million? | _____ | _____ |
| 7. Is line 4 at least 6 times line 1? | _____ | _____ |
| *8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9. | _____ | _____ |
| 9. Is line 4 at least 6 times line 1? | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.1709.C.8.a.ii are used.]

| Alternative II | | |
|--|------------|-----------|
| 1. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| 2. Current bond rating of most recent issuance of this firm and name of rating service | _____ | |
| 3. Date of issuance of bond | _____ | |
| 4. Date of maturity of bond | _____ | |
| *5. Tangible net worth | \$ _____ | |
| *6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ | |
| | <u>YES</u> | <u>NO</u> |
| 7. Is line 5 at least \$10 million? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| *9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure.]

PART B. CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.1709.C.8.a.i are used.]

| Alternative I | | |
|---|------------|-----------|
| 1. Sum of current closure cost estimates (total all cost estimates shown above) | \$ _____ | |
| *2. Tangible net worth | \$ _____ | |
| *3. Net worth | \$ _____ | |
| *4. Current Assets | \$ _____ | |
| *5. Current liabilities | \$ _____ | |
| *6. The sum of net income plus depreciation, depletion, and amortization | \$ _____ | |
| *7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) | \$ _____ | |
| | <u>YES</u> | <u>NO</u> |
| 8. Is line 2 at least \$10 million? | _____ | _____ |
| 9. Is line 2 at least 6 times line 1? | _____ | _____ |
| *10. Are at least 90 percent of the firm's assets located | _____ | _____ |

| Alternative I | | |
|--|-------|-------|
| in the U.S.? If not, complete line 11. | | |
| 11. Is line 7 at least 6 times line 1? | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.1709.C.8.a.ii are used.]

| Alternative II | | |
|--|------------|-----------|
| 1. Sum of current closure cost estimates (total of all cost estimates shown above) | \$ _____ | |
| 2. Current bond rating of most recent issuance of this firm and name of rating service | _____ | |
| 3. Date of issuance of bond | _____ | |
| 4. Date of maturity of bond | _____ | |
| *5. Tangible net worth (If any portion of the closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line.) | \$ _____ | |
| *6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) | \$ _____ | |
| | <u>YES</u> | <u>NO</u> |
| 7. Is line 5 at least \$10 million? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| 9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage and/or closure.]

PART C. LIABILITY COVERAGE AND/OR CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.1709.C.8.a.i are used.]

| Alternative I | | |
|---|------------|-----------|
| 1. Sum of current closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| 2. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| 3. Sum of lines 1 and 2 | \$ _____ | |
| *4. Total liabilities (If any portion of your closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.) | \$ _____ | |
| *5. Tangible net worth | \$ _____ | |
| *6. Net worth | \$ _____ | |
| *7. Current assets | \$ _____ | |
| *8. Current liabilities | \$ _____ | |
| *9. The sum of net income plus depreciation, depletion, and amortization | \$ _____ | |
| *10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ | |
| | <u>YES</u> | <u>NO</u> |

| Alternative I | | |
|---|-------|-------|
| 11. Is line 5 at least \$10 million? | _____ | _____ |
| 12. Is line 5 at least 6 times line 3? | _____ | _____ |
| *13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14. | _____ | _____ |
| 14. Is line 10 at least 6 times line 3? | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.1709.C.8.a.ii are used.]

| Alternative II | | |
|--|----------|-------|
| 1. Sum of current closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| 2. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| 3. Sum of lines 1 and 2 | \$ _____ | |
| 4. Current bond rating of most recent issuance of this firm and name of rating service | _____ | |
| 5. Date of issuance of bond | _____ | |
| 6. Date of maturity of bond | _____ | |
| *7. Tangible net worth (If any portion of the closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.) | \$ _____ | |
| *8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ | |
| | YES | NO |
| 9. Is line 7 at least \$10 million? | _____ | _____ |
| 10. Is line 7 at least 6 times line 3? | _____ | _____ |
| *11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. | _____ | _____ |
| 12. Is line 8 at least 6 times line 3? | _____ | _____ |

[The following is to be completed by all firms providing the financial test.]

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.1799.Appendix I.

[Signature of chief financial officer for the firm]

[Typed name of chief financial officer]

[Title]

[Date]

J. Appendix J—Corporate Guarantee

[Insert, as applicable: "CENTRALIZED WASTE TREATMENT FACILITY," "COMMERCIAL PREPARER OF SEWAGE SLUDGE," or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

CORPORATE GUARANTEE FOR LIABILITY COVERAGE AND/OR CLOSURE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the affected person] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.1707.A.1.d and/or 1709.C.8.i.

(B). [Subsidiary] is the affected person covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage and/or closure and the amount of annual aggregate liability coverage and/or closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure of the facility identified in Paragraph (B) above.

(D). For value received from the affected person, guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that the affected person fails to perform closure of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.1709.C.3, as applicable, in the name of the affected person in the amount of the current closure estimates as specified in LAC 33:IX.1709.C.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from the affected person, guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that the affected person fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facility, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to the affected person that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"], as applicable, in the name of the affected person. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the affected person has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" and/or "closure "] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"], as applicable, in the name of the affected person unless the affected person has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure, insert "amendment or modification of the closure plan, the extension or reduction of the time of performance of closure, or "] any other modification or alteration of an obligation of the affected person pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the affected person must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"] for the above-listed facility, except

that guarantor may cancel this guarantee by sending notice, by certified mail, to the administrative authority and to the affected person, such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts.

(K). The guarantor agrees that if the affected person fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the affected person.

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the affected person. Guarantor expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.1799.Appendix J, effective on the date first above written.
Effective date: _____

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

Notary Public

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

Chapter 19. State of Louisiana Stream Control Commission—Repealed

§1901. Order

Repealed.

~~A. Effective July 1, 1968, it shall be the order of the Louisiana Stream Control Commission that no oil field wastes, including salt water, produced by gas or oil field operations in the state of Louisiana shall be allowed to drain or flow into waters of the state except:~~

~~1. salt water may be disposed of in normally saline waters, tidally affected waters, brackish waters or other waters unsuitable for human consumption or agricultural purposes. Where quality of receiving waters is not clearly brackish, saline or tidally affected, or unsuitable for human consumption or agricultural purposes, individual judgment shall be rendered by the Stream Control Commission; and~~

~~2. as further provided under the applicable rules and regulations of the Department of Conservation.~~

~~B. Nothing herein contained is intended to repeal, modify or otherwise affect existing regulations of this commission.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1435.

HISTORICAL NOTE: Adopted by the Department of Wildlife and Fisheries, Office of Coastal and Marine Resources on July 1, 1968, repealed by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 23. Definitions and General LPDES Program Requirements

§2313. Definitions

A. The following definitions apply to LAC 33:IX.Chapters 23, 25, 27, 29, 31, 33, and 35~~23–35~~. Terms not defined in this Section have the meaning given by the CWA.

* * *

Boiler Blowdown—discharge from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

* * *

Composite Sample—a sample consisting of a minimum of eight grab samples of effluent collected at regular intervals over a normal operating day and combined in proportion to flow, or a sample continuously collected in proportion to flow over a 24-hour period.

* * *

Noncontact Cooling Water—water that is used to remove heat and which does not come into direct contact with any raw material, or intermediate or finished product.

* * *

Sanitary Waste—treated or untreated wastewaters that contain human metabolic wastes.

* * *

Territorial Seas—the belt of the seas measured from the line of ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles (as defined at 33 U.S.C. 1362.8).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:722 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2755 (December 2000), LR 28:464 (March 2002), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2365 (November 2007), LR 34:***.

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. Duty to Apply

1. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503, and who does not have an effective permit, except persons covered by general permits under LAC 33:IX.2515, or discharges excluded under LAC 33:IX.2315, or a user of a privately owned treatment works unless the state administrative authority requires otherwise under LAC 33:IX.2707.M, must submit a complete application to the Office of Environmental Services in accordance with this Section and LAC 33:IX.Chapters 31, 33, and 35~~31–35~~. All concentrated animal feeding operations have a duty to seek coverage under an LPDES permit as described in LAC 33:IX.2505.D. In addition to the application requirements contained in this Chapter, *centralized waste treatment facilities*, as defined in LAC 33:IX.4903,

that receive exploration and production waste shall also comply with the requirements of LAC 33:IX.715.

A.2. – O.Editorial Note. ...

P. Additional Requirements for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately-owned sewage treatment facilities regulated by the Public Service Commission must also comply with the financial security requirements in LAC 33:IX.Chapter ~~1767~~. Following receipt of the permit application the administrative authority shall calculate and subsequently notify the applicant of the "waste discharge capacity per day" for the facility. The applicant ~~will~~shall use this figure to determine the amount of the financial security required by LAC 33:IX.Chapter ~~1767~~. The applicant shall subsequently obtain and supply the department with the financial security document in accordance with LAC 33:IX.Chapter ~~1767~~. No permit shall be issued after July 1, 1999, without the required financial security, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

Q. – R.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:2069, 2165 (October 2007), LR 33:2360 (November 2007), LR 34:**.

Chapter 29. Transfer, Modification, Revocation and Reissuance, and Termination of LPDES Permits

§2903. Modification or Revocation and Reissuance of Permits

A. – A.2.b. ...

3. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter ~~1767~~, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:470 (March 2002), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 32:1033 (June 2006), LR 34:**

Chapter 65. Additional Requirements Applicable to the LPDES Program

§6509. Additional Requirements for Permit Renewal and Termination

A. – A.3. ...

4. failure to provide or maintain financial security in accordance with LAC 33:IX.Chapter 1767.

B. – D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

Chapter 67. Financial Security—Repealed**§6701. Applicability**Repealed.

~~A. This Subsection shall be applicable to the following actions, for privately owned sewage treatment facilities regulated by the Public Service Commission, when taken after July 1, 1999:~~

- ~~1. issuance of a new discharge permit;~~
- ~~2. renewal of an existing discharge permit;~~
- ~~3. modification of an existing discharge permit; and~~
- ~~4. transfer of an existing discharge permit to a different permittee.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§6703. Acceptable Form of Financial SecurityRepealed.

~~A. Financial security required by R.S. 30:2075.2 may be established by any one or a combination of the following mechanisms:~~

- ~~1. Surety Bond. The requirements of this Section may be satisfied by obtaining a surety bond that conforms to the following requirements:~~
 - ~~a. the bond must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Environmental Services, Water and Waste Permits Division, Box 4313, Baton Rouge, LA 70821-4313;~~
 - ~~b. the bond must be executed by the permittee and a corporate surety licensed to do business in Louisiana. The surety must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and be approved by the administrative authority;~~
 - ~~c. under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond;~~

d. ~~under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority at the address indicated in Subparagraph A.1.a of this Section. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts; and~~

e. ~~the wording of the surety bond must be identical to the following, except that material in brackets is to be replaced with the relevant information and the brackets deleted:~~

PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name(s) and business address(es)]

[Site identification number, site name, facility name, facility permit number, facility address, amount for each facility guaranteed by this bond]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and, for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq., to have a permit in order to discharge wastewater from the facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for the conditions specified in LAC 33:IX.Chapter 67, as a condition of the permit; and

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform, in a timely manner, the requirements of LAC 33:IX applicable to the facility for which this bond guarantees the requirements of LAC 33:IX, in accordance with the other requirements of the permit as such permit may be amended and pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide other financial assurance as specified in LAC 33:IX.Chapter 67 and obtain written approval of the administrative authority of such assurance within 90 days after the date of notice of cancellation of this bond is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the requirements of LAC 33:IX or of its permit, for the facility for which this bond guarantees performances of the requirements of LAC 33:IX.Chapter 67, the Surety shall either perform the requirements of LAC 33:IX.Chapter 67, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to permit, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

~~The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed, beginning on the date that both the Principal and the administrative authority received the notice of cancellation as evidenced by the return receipts.~~

~~The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.~~

~~The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.~~

~~IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND on the date set forth above.~~

~~Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.6703.A.1, effective on the date this bond was executed.~~

~~PRINCIPAL~~

~~{Signature(s)}~~

~~{Name(s)}~~

~~{Title(s)}~~

~~CORPORATE SURETY~~

~~{Name and address}~~

~~State of incorporation: _____~~

~~Liability limit: \$ _____~~

~~{Signature(s)}~~

~~{Name(s) and title(s)}~~

~~[For every cosurety, provide signature(s) and other information in the same manner as for Surety above.]~~

~~Bond premium: \$ _____~~

~~2. Letter of Credit. The requirements of this Section may be satisfied by obtaining a Letter of Credit that conforms to the following requirements:~~

~~a. the letter of credit must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Environmental Services, Water and Waste Permits Division, Box 4313, Baton Rouge, LA 70821-4313;~~

~~b. the issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency;~~

~~c. the letter of credit must be irrevocable and issued for a period of at least one year, unless at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority at the address indicated in Subparagraph A.2.a of this Section by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts; and~~

~~d. the wording of the letter of credit shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:~~

IRREVOCABLE LETTER OF CREDIT

Secretary

Louisiana Department of Environmental Quality

Office of Environmental Services

Water and Waste Permits Division

Post Office Box 4313

~~Baton Rouge, Louisiana 70821-4313~~

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the conditions specified in LAC 33:IX.Chapter 67 for its [list site identification number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:

(1). _____ A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(2). _____ A statement, signed by the administrative authority, declaring that the amount of the draft is payable pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.6703.A.2, effective on the date shown immediately below.

[Signature(s) and title(s) of
official(s) of issuing
institution(s)]
[date]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2515 (October 2005), repealed LR 34:**.

§6705. Amount of Required Financial Security

Repealed.

A. _____ The amount of the financial security must be equal to or greater than \$1 per gallon of wastewater discharge per day from the facility, as determined by the administrative authority, up to a maximum of \$25,000.

B. _____ The secretary may, in his discretion, allow a single financial security instrument to satisfy the requirements of this Chapter for up to four permits held by the same permittee, if the amount of financial security provided by that instrument is large enough to satisfy the requirements of Subsection A of this Section for the facility with the greatest amount of wastewater discharge per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:48 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§6707. Conditions for Forfeiture

Repealed.

~~A.——The secretary or his designee may enter an order requiring forfeiture of all or part of the financial security, if he determines that:~~

~~1.——the continued operation or lack of operation and maintenance of the facility covered by this Subsection represents a threat to public health, welfare, or the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such determination includes, but is not limited to:~~

~~a.——the discharge of pollutants exceeding limitations imposed by applicable permits;~~

~~b.——failure to utilize or maintain adequate disinfection facilities;~~

~~c.——failure to correct overflows or backups from the collection system;~~

~~d.——a declaration of a public health emergency by the state health officer; and~~

~~e.——a determination by the Public Service Commission that the permittee is financially unable to properly operate or maintain the system;~~

~~2.——reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and~~

~~3.——it does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:48 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§6709. Use of Proceeds

Repealed.

~~A.——The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system, as deemed necessary by the secretary under LAC 33:IX.6707.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:49 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:**.

Subpart 3. Louisiana Sewage Sludge and Biosolids Program

Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids

Subchapter A. Program Requirements

§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge

A. – C.3.d.iii. ...

4. The financial assurance requirements for commercial preparers of sewage sludge and commercial land appliers of biosolids are as indicated in LAC 33:IX.Chapter 17.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2382 (November 2007), LR 34:**

§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids

Repealed.

~~A. — Financial Responsibility during Operation. Commercial preparers of sewage sludge and commercial land appliers of biosolids have the following financial responsibilities while their facilities are in operation:~~

~~1. — Commercial preparers of sewage sludge and commercial land appliers of biosolids have the same financial assurance requirements as privately owned sewage treatment facilities (LAC 33:IX.Chapter 67) if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.~~

~~2. — All other commercial preparers of sewage sludge and commercial land appliers of biosolids shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial responsibility may be established by any one or a combination of the following:~~

~~a. — Evidence of Liability Insurance. Evidence of liability insurance may consist of either a signed duplicate original of a commercial preparer of sewage sludge or commercial land applier of biosolids liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:~~

~~i. — a statement of coverage relative to environmental risks;~~
~~ii. — a statement of all exclusions to the policy; and~~
~~iii. — a certification by the insurer that the insurance afforded~~
~~with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy provided, however, that any provisions of the policy inconsistent with Subclauses A.2.a.iii.(a) – (f) of this Section are amended to conform with said Subclauses:~~

~~(a).—bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;~~

~~(b).—the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subparagraph A.2.d, e, or f of this Section;~~

~~(c).—whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;~~

~~(d).—cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;~~

~~(e).—any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and~~

~~(f).—the insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.~~

~~b.——Wording of Liability Endorsement. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.7395.Appendix A, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~c.——Wording of Certificate of Insurance. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix B, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~d.——Letter of Credit. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the administrative authority.~~

~~i.——The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.~~

~~ii.——A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section.~~

~~iii.——The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:~~

~~(a).——the agency interest number;~~

~~(b).——the site name;~~

~~(c).——the facility name;~~

~~(d).——the facility permit number; and~~

~~(e).——the amount of funds assured for liability coverage of the facility by the letter of credit.~~

iv.——The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

v.——The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395 Appendix C, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

e.——Financial Test

i.——To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Environmental Services the documents required by Paragraph B.8 of this Section demonstrating that the requirements of Paragraph B.8 of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

ii.——The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subparagraph A.2.f of this Section.

iii.——The wording of the financial test shall be as specified in Subparagraph B.8.d of this Section.

f.——Corporate Guarantee

i.——A permit holder or applicant may meet the requirements of Paragraph A.2 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

(a).——the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

(b).——the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer of sewage sludge or land applier of biosolids to be covered by the guarantee, and the guarantee extends to certain facilities;

(c).——if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

(d).—~~the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;~~

(e).—~~the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;~~

(f).—~~the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure or post closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;~~

(g).—~~the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;~~

(h).—~~the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;~~

(i).—~~the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;~~

(j).—~~the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s); and~~

(k).—~~the wording of the corporate guarantee shall be as specified in Subparagraph B.8.i of this Section.~~

ii.—~~A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.~~

g.—~~The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.~~

~~h. — Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other materials, feedstock, or supplements are first received for processing.~~

~~B. — Financial Responsibility for Closure and Post-Closure Care for a Commercial Preparer of Sewage Sludge~~

~~1. — Permit holders or applicants have the following financial responsibilities for closure and post-closure care.~~

~~a. — Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.~~

~~b. — The applicant or permit holder shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.~~

~~i. — The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.~~

~~ii. — The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required, and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.~~

~~iii. — The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared, on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Clauses B.1.b.i-ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.~~

~~iv. — For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.~~

~~2. — Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test.~~

~~The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria:~~

~~a. — Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.~~

~~b. — A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within the state of Louisiana and are specifically identified in the mechanism.~~

~~c. — The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post closure estimates for each facility covered.~~

~~d. — When all closure and post closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).~~

~~3. — Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services.~~

~~a. — The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.~~

~~b. — Trusts must be accomplished in accordance with and subject to the laws of the state of Louisiana. The beneficiary of the trust shall be the administrative authority.~~

~~c. — Trust fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the permit holder or applicant upon approval of the administrative authority.~~

~~d. — The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.~~

~~e. — The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause B.1.b.iv of this Section.~~

~~f. — If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Paragraph.~~

~~g. — After the pay in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.~~

~~h. — After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.~~

~~i. — The wording of the trust agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.~~

~~4. — Surety Bonds. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.~~

~~a. — The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.~~

~~b. — The permit holder or applicant who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.~~

~~c. — The bond must guarantee that the operator will:~~

- ~~i. — fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;~~
- ~~ii. — fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or~~
- ~~iii. — provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.~~

~~d. — Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.~~

~~e. — The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.~~

~~f. — Whenever the current cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current~~

~~cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.~~

~~g. — Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.~~

~~h. — The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:IX.7395. Appendix E, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~5. — Performance Bonds. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.~~

~~a. — The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.~~

~~b. — The permit holder or applicant who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.~~

~~c. — The bond must guarantee that the permit holder or applicant will:~~

~~i. — perform final closure and post closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or~~

~~ii. — provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after the date both the permit holder and the administrative authority receive notice of cancellation of the bond from the surety.~~

~~d. — Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.~~

~~e. — The penal sum of the bond must be at least equal to the current closure and post closure cost estimates.~~

~~f. — Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section. Whenever the current cost estimate~~

decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. — Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

h. — The wording of the performance bond shall be identical to the wording in LAC 33:IX.7395. Appendix F, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. — Letter of Credit. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.

a. — The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

b. — A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. — The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information:

i. — the agency interest number;

ii. — the site name;

iii. — the facility name;

iv. — the facility permit number; and

v. — the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. — The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority have received the notice, as evidenced by the return receipts.

e. — The letter of credit must be issued in an amount at least equal to the current closure and post closure cost estimates.

f. — Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the

~~amount of the current closure and post closure cost estimates upon written approval of the administrative authority.~~

~~g.—— Following a determination by the administrative authority that the permit holder has failed to perform final closure or post closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.~~

~~h.—— The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395. Appendix G, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~7.—— Insurance. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.~~

~~a.—— At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in one or more states, and authorized to transact insurance business in the state of Louisiana.~~

~~b.—— The insurance policy must be issued for a face amount at least equal to the current closure and post closure cost estimates.~~

~~c.—— The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.~~

~~d.—— The insurance policy must guarantee that funds will be available to close the facility and provide post closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.~~

~~e.—— After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post closure may request reimbursement for closure or post closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.~~

~~f.—— The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.~~

~~g.—— Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.~~

~~h.—— The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return~~

receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

i. ~~the administrative authority deems the facility abandoned;~~
 ii. ~~the permit is terminated or revoked or a new permit is denied;~~

iii. ~~closure and/or post-closure is ordered;~~
 iv. ~~the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or~~
 v. ~~the premium due is paid.~~

i. ~~Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure and post-closure cost estimates following written approval by the administrative authority.~~

j. ~~The wording of the certificate of insurance shall be identical to the wording in LAC 33:IX.7395. Appendix H, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

8. ~~Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Paragraph A.2.f and/or B.8.i of this Section.~~

a. ~~To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:~~

i. ~~the permit holder, applicant, or parent corporation of the permit holder or applicant must have:~~

(a). ~~tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;~~

(b). ~~tangible net worth of at least \$10 million; and~~

(c). ~~assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or~~

ii. ~~the permit holder, applicant, or parent corporation of the permit holder or applicant must have:~~

(a). ~~a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;~~

(b). ~~tangible net worth of at least \$10 million; and~~

~~(c).—assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.~~

~~b.——To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to the Office of Environmental Services:~~

~~i.——a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subparagraph B.8.a of this Section and including the information required by Subparagraph B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;~~

~~ii.——a copy of the independent certified public accountant's (CPA's) report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and~~

~~iii.——a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:~~

~~(a).——the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and~~

~~(b).——in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.~~

~~c.——The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.~~

~~d.——The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:IX.7395.Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:~~

~~i.——a list of commercial facilities, whether in the state of Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;~~

~~ii.——a list of commercial facilities, whether in the state of Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test~~

~~or self insurance by the permit holder or applicant, including the cost estimates for the closure and post closure care of each facility;~~

~~iii. — a list of the commercial facilities, whether in the state of Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post closure is demonstrated through the financial test or through use of self insurance, including the current cost estimate for the closure or post closure care for each facility and the amount of annual aggregate liability coverage for each facility; and~~

~~iv. — a list of commercial facilities, whether in the state of Louisiana or not, for which financial assurance for closure or post closure care is not demonstrated through the financial test, self insurance, or other substantially equivalent state mechanisms, including the estimated cost of closure and post closure of such facilities.~~

~~e. — For the purposes of this Subsection the phrase *tangible net worth* shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.~~

~~f. — The phrase *current closure and post closure cost estimates*, as used in Subparagraph B.8.a of this Section, includes the cost estimates required to be shown in Subclause B.8.a.i.(a) of this Section.~~

~~g. — After initial submission of the items specified in Subparagraph B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subparagraph B.8.b of this Section.~~

~~h. — The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Paragraph B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subparagraph B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subparagraph B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.~~

~~i. — A permit holder or applicant may meet the requirements of Paragraph B.8 of this Section for closure and/or post closure by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subparagraphs B.8.a-h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.7395. Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:~~

~~i. — the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;~~

ii. ~~the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer of sewage sludge or land applicator of biosolids to be covered by the guarantee, and the guarantee extends to certain facilities;~~

iii. ~~closure plans, as used in the guarantee, refers to the plans maintained as required by the state of Louisiana commercial preparer of sewage sludge or land applicator of biosolids rules and regulations for the closure and post-closure care of commercial preparers of sewage sludge facilities or commercial land applicators of biosolids sites, as identified in the guarantee;~~

iv. ~~for value received from the permit holder or applicant, the guarantor guarantees to the Office of Environmental Services that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph B.3 of this Section, in the name of the permit holder or applicant, in the amount of the current closure or post-closure cost estimates or as specified in Subparagraph B.1.b of this Section;~~

v. ~~the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;~~

vi. ~~the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;~~

vii. ~~the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;~~

viii. ~~the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;~~

ix. ~~the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant, as evidenced by the return receipts;~~

~~x. — the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and~~

~~xi. — the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).~~

~~9. — Local Government Financial Test. An owner or operator that satisfies the requirements of Subparagraphs B.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph B.9.d of this Section.~~

~~a. — Financial Component~~

~~i. — The owner or operator must satisfy the following conditions, as applicable:~~

~~(a). — if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or~~

~~(b). — the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.~~

~~ii. — The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).~~

~~iii. — A local government is not eligible to assure its obligations under Paragraph B.9 of this Section if it:~~

~~(a). — is currently in default on any outstanding general obligation bonds;~~

~~(b). — has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;~~

~~(c). — operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or~~

~~(d). — receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Clause B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case by case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.~~

~~iv. — The following terms used in this Subsection are defined as follows:~~

~~(a). — *Deficit* — total annual revenues minus total annual expenditures.~~

~~(b).—*Total Revenues*—revenues from all taxes and fees, but not including the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.~~

~~(c).—*Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.~~

~~(d).—*Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.~~

~~(e).—*Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.~~

~~b.——Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.~~

~~c.——Recordkeeping and Reporting Requirements~~

~~i.——The local government owner or operator must place the following items in the facility's operating record:~~

~~(a).——a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subparagraph B.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses B.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses B.9.a.i-iii and Subparagraphs B.9.b and d of this Section;~~

~~(b).——the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years, and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;~~

~~(c).——a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed-upon procedures engagement relative to the financial ratios required by Subclause B.9.a.i.(b) of this Section, if applicable, and the requirements of Clause B.9.a.ii and Subclauses B.9.a.iii.(c)-(d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and~~

~~(d).——a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).~~

~~ii.——The items required in Clause B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before~~

~~the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.~~

~~iii. — After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.~~

~~iv. — The local government owner or operator is no longer required to meet the requirements of Subparagraph B.9.c of this Section when:~~

~~(a). — the owner or operator substitutes alternate financial assurance, as specified in this Section; or~~

~~(b). — the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.~~

~~v. — A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.~~

~~vi. — The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.~~

~~d. — Calculation of Costs to be Assured. The portion of the closure, post closure, and corrective action costs for which an owner or operator can assure under Paragraph B.9 of this Section is determined as follows:~~

~~i. — if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or~~

~~ii. — if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post closure, and corrective action costs it seeks to assure under Paragraph B.9 of this Section, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and~~

~~iii. — the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Clauses B.9.d.i ii of this Section.~~

~~10. — Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must~~

meet the requirements of the local government financial test in Paragraph B.9 of this Section, and must comply with the terms of a written guarantee.

a. ~~Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post closure care. The guarantee must provide that:~~

i. ~~if the owner or operator fails to perform closure and post closure care, of a facility covered by the guarantee, the guarantor will:~~

(a) ~~perform, or pay a third party to perform, closure and post closure care as required; or~~

(b) ~~establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the owner or operator;~~

ii. ~~the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and~~

iii. ~~if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.~~

b. ~~Recordkeeping and Reporting~~

i. ~~The owner or operator must place a certified copy of the guarantee, along with the items required under Subparagraph B.9.e of this Section, into the facility's operating record before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post closure care.~~

ii. ~~The owner or operator is no longer required to maintain the items specified in Clause B.10.b.i of this Section when:~~

(a) ~~the owner or operator substitutes alternate financial assurance as specified in this Section; or~~

(b) ~~the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.~~

iii. ~~If a local government guarantor no longer meets the requirements of Paragraph B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.~~

11. ~~Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that~~

~~mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Paragraphs B.3-8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.~~

~~12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:~~

~~a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Environmental Services so stating;~~

~~b. the state finds the facility in compliance with applicable and appropriate permit conditions;~~

~~c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and~~

~~d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2386 (November 2007), repealed LR 34:**.

Subchapter B. Appendices

§7395. Financial Assurances Documents—Appendices A, B, C, D, E, F, G, H, I, and J

Repealed.

~~A. Appendix A—Liability Endorsement~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND
APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~LIABILITY ENDORSEMENT~~

~~Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Water Permits Division
Dear Sir:~~

~~(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with Louisiana Administrative Code (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for~~

sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1) (5), below, are hereby amended to conform with Subclauses (1) (5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.A.2.d, e, or f.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.7307.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

{Signature of authorized representative of insurer}

{Typed name of authorized representative of insurer}

{Title of authorized representative of insurer}

{Address of authorized representative of insurer}

B. Appendix B Certificate of Insurance

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE

CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Water Permits Division
Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under Louisiana Administrative Code (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list agency interest number(s), site name(s), facility name(s), facility permit number(s), and site address(es)] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.A.2.d, e, or f.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.A.2.e, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]

[Typed name of authorized representative of insurer]

[Title of authorized representative of insurer]

[Address of authorized representative of insurer]

~~C. Appendix C Letter of Credit~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~IRREVOCABLE LETTER OF CREDIT~~

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821 4313
Attention: ~~Office of Environmental Services;~~
Water Permits Division
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. [number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number(s), site name(s), facility name(s), and facility permit number(s)] at [location(s)], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial preparer of sewage sludge facility or commercial land applier of biosolids land application site at the [name of permit holder or applicant] at [site location(s)] as set forth in the Louisiana Administrative Code (LAC), Title 33, Part IX.7307.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-

current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.7307.A.2.d.v, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

D. ~~Appendix D~~ Trust Agreement

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~TRUST AGREEMENT/STANDBY TRUST AGREEMENT~~

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or a "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit for a commercial preparer of sewage sludge facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee;

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

~~SECTION 1. DEFINITIONS~~

~~As used in this Agreement:~~

~~(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.~~

~~(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.~~

~~(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.~~

~~(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.~~

~~SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES~~

~~This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]~~

~~SECTION 3. ESTABLISHMENT OF FUND~~

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

~~SECTION 4. PAYMENT FOR CLOSURE AND/OR POST CLOSURE CARE OR LIABILITY COVERAGE~~

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

~~SECTION 5. PAYMENTS COMPRISED BY THE FUND~~

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

~~SECTION 6. TRUSTEE MANAGEMENT~~

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a 2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

~~SECTION 7. COMMINGLING AND INVESTMENT~~

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a 1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

~~SECTION 8. EXPRESS POWERS OF TRUSTEE~~

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction

for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30 day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Louisiana Administrative Code (LAC), Title 33, Part IX.7307.B.3.i, on the date first written above.

WITNESSES:

GRANTOR:

By: _____
Its: _____

{Seal}

TRUSTEE:

By: _____

Its: _____

{Seal}

THUS DONE AND PASSED in my office in _____, on the
 _____ day of _____, 20_____, in the presence of
 _____ and _____, competent witnesses, who hereunto
 sign their names with the said appearers and me, Notary, after reading the whole.

 Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

NOTARY PUBLIC

E. ~~Appendix E Surety Bond~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND
 APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

FINANCIAL GUARANTEE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ _____

Surety's bond number: _____

~~Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.~~

~~WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer of sewage sludge facility identified above; and~~

~~WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post closure care, as a condition of the permit; and~~

~~WHEREAS, said Principal shall establish a standby trust fund as is required by the Louisiana Administrative Code (LAC), Title 33, Part IX.7307, when a surety bond is used to provide such financial assurance;~~

~~NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,~~

~~OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,~~

~~OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.7307.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,~~

~~THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.~~

~~The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.~~

~~The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.~~

~~The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.~~

~~The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.~~

~~The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.~~

~~The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.B and the conditions of the commercial preparer of sewage sludge facility permit so that it guarantees a new closure and/or post closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.~~

~~The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.~~

~~IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.~~

~~Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.4.h, effective on the date this bond was executed.~~

~~PRINCIPAL~~

~~{Signature(s)}~~

~~{Name(s)}~~

~~{Title(s)}~~

~~{Corporate Seal}~~

~~CORPORATE SURETIES~~

~~{Name and Address}~~

~~State of incorporation: _____~~

~~Liability limit: \$ _____~~

~~{Signature(s)}~~

~~{Name(s) and title(s)}~~

~~{Corporate seal}~~

~~{This information must be provided for each cosurety}~~

~~Bond Premium: \$ _____~~

~~F. Appendix F Performance Bond~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~PERFORMANCE BOND~~

~~Date bond was executed: _____~~

~~Effective date: _____~~

~~Principal: {legal name and business address of permit holder or applicant}~~

~~Type of organization: {insert "individual," "joint venture," "partnership," or "corporation"}~~

~~State of incorporation: _____~~

~~Surety: {name(s) and business address(es)}~~

~~{agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post closure costs separately)}~~

~~Total penal sum of bond: \$ _____~~

~~Surety's bond number: _____~~

~~Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.~~

~~WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer of sewage sludge facility identified above; and~~

~~WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post closure care, as a condition of the permit; and~~

~~WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;~~

~~THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;~~

~~AND, if the Principal shall faithfully perform post closure care of each facility for which this bond guarantees post closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;~~

~~OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.~~

~~The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.~~

~~Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.7305.C.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.~~

~~Upon notification by the administrative authority that the Principal has been found in violation of the post closure requirements of the LAC 33:IX.7305.C.3, or of its permit for the facility for which this bond guarantees performance of post closure, the Surety shall either perform post closure in accordance with the closure plan and other permit requirements or place the post closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.~~

~~Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.7307.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.~~

~~The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.~~

~~The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.~~

~~The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.~~

~~The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.~~

~~The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.B and the conditions of the commercial preparer of sewage sludge facility permit so that it guarantees a new closure and/or post closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.~~

~~The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.~~

~~IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.~~

~~Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.5.h, effective on the date this bond was executed.~~

~~PRINCIPAL
{Signature(s)}
{Name(s)}
{Title(s)}
{Corporate seal}~~

~~CORPORATE SURETY
{Name and address}
State of incorporation: _____
Liability limit: \$ _____
{Signature(s)}
{Name(s) and title(s)}
{Corporate seal}
{For every cosurety, provide signature(s),
corporate seal, and other information in the same
manner as for Surety above.}
Bond premium: \$ _____~~

~~G. Appendix G Letter of Credit~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND
APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~IRREVOCABLE LETTER OF CREDIT~~

~~Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: _____ Office of Environmental Services, Water Permits Division
Dear Sir:~~

~~We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:~~

~~(i). _____ A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;~~

~~(ii). _____ A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.~~

~~The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date~~

of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert "the most recent addition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"], shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in Louisiana Administrative Code (LAC), Title 33, Part IX.7307.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

~~H. Appendix H Certificate of Insurance~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST CLOSURE CARE~~

Name and Address of Insurer: _____

(hereinafter called the "Insurer")

Name and Address of Insured: _____

(hereinafter called the "Insured")

(Note: Insured must be the permit holder or applicant.)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.7307.B, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

~~I. Appendix I Letter from the Chief Financial Officer~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~LETTER FROM THE CHIEF FINANCIAL OFFICER (LIABILITY COVERAGE, CLOSURE, AND/OR POST CLOSURE)~~

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: _____ Office of Environmental Services, Water Permits Division
Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post closure," as applicable] as specified in [insert "Louisiana Administrative Code (LAC), Title 33, Part IX.7307.A," "LAC 33:IX.7307.B," or "LAC 33:IX.7307.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.7307.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which financial assurance for [insert "closure," "post closure care," or "closure and post closure care"] is demonstrated through a financial test similar to that specified in LAC 33:IX.7307.B or other forms of self insurance. The current [insert "closure," "post closure," or "closure and post closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.7307.B" or "LAC 33:IX.7307.A and B"], [insert "liability coverage," "closure," "post closure care," or "closure and post closure care"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which financial assurance for liability coverage, closure and/or post closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.7307.A and/or B. The current closure and/or post closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

| |
|----------------------|
| Alternative I |
|----------------------|

| | | |
|---|----------|----|
| -1. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| *2. Current assets | \$ _____ | |
| *3. Current liabilities | \$ _____ | |
| *4. Tangible net worth | \$ _____ | |
| *5. If less than 90 percent of assets are located in the U.S., give total U.S. assets | \$ _____ | |
| | YES | NO |
| -6. Is line 4 at least \$10 million? | == | == |
| -7. Is line 4 at least 6 times line 1? | == | == |
| *8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9. | == | == |
| -9. Is line 4 at least 6 times line 1? | == | == |

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

| Alternative II | | |
|--|----------|----|
| -1. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| -2. Current bond rating of most recent issuance of this firm and name of rating service | _____ | |
| -3. Date of issuance of bond | _____ | |
| -4. Date of maturity of bond | _____ | |
| *5. Tangible net worth | \$ _____ | |
| *6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ | |
| | YES | NO |
| -7. Is line 5 at least \$10 million? | == | == |
| -8. Is line 5 at least 6 times line 1? | == | == |
| *9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. | == | == |
| 10. Is line 6 at least 6 times line 1? | == | == |

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

PART B. CLOSURE AND/OR POST CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

| Alternative I | | |
|---|----------|----|
| -1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above) | \$ _____ | |
| *2. Tangible net worth | \$ _____ | |
| *3. Net worth | \$ _____ | |
| *4. Current Assets | \$ _____ | |
| *5. Current liabilities | \$ _____ | |
| *6. The sum of net income plus depreciation, depletion, and amortization | \$ _____ | |
| *7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) | \$ _____ | |
| | YES | NO |
| -8. Is line 2 at least \$10 million? | == | == |
| -9. Is line 2 at least 6 times line 1? | == | == |
| *10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11. | == | == |

| | | |
|---|----|----|
| -11. Is line 7 at least 6 times line 1? | == | == |
|---|----|----|

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

| Alternative II | | |
|--|----------|----|
| -1. Sum of current closure and post closure cost estimates (total of all cost estimates shown above) | \$ _____ | |
| -2. Current bond rating of most recent issuance of this firm and name of rating service | _____ | |
| -3. Date of issuance of bond | _____ | |
| -4. Date of maturity of bond | _____ | |
| *5. Tangible net worth (If any portion of the closure and/or post closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line.) | \$ _____ | |
| *6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) | \$ _____ | |
| | YES | NO |
| -7. Is line 5 at least \$10 million? | == | == |
| -8. Is line 5 at least 6 times line 1? | == | == |
| -9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10. | == | == |
| -10. Is line 6 at least 6 times line 1? | == | == |

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post closure care.]

PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

| Alternative I | | |
|---|----------|----|
| -1. Sum of current closure and/or post closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| -2. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| -3. Sum of lines 1 and 2 | \$ _____ | |
| *4. Total liabilities (If any portion of your closure and/or post closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.) | \$ _____ | |
| *5. Tangible net worth | \$ _____ | |
| *6. Net worth | \$ _____ | |
| *7. Current assets | \$ _____ | |
| *8. Current liabilities | \$ _____ | |
| *9. The sum of net income plus depreciation, depletion, and amortization | \$ _____ | |
| *10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ | |
| | YES | NO |
| -11. Is line 5 at least \$10 million? | == | == |
| -12. Is line 5 at least 6 times line 3? | == | == |
| *13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14. | == | == |
| -14. Is line 10 at least 6 times line 3? | == | == |

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

| Alternative II | | |
|--|----------|-------|
| -1. Sum of current closure and/or post closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| -2. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| -3. Sum of lines 1 and 2 | \$ _____ | |
| -4. Current bond rating of most recent issuance of this firm and name of rating service | _____ | |
| -5. Date of issuance of bond | _____ | |
| -6. Date of maturity of bond | _____ | |
| *7. Tangible net worth (If any portion of the closure and/or post closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.) | \$ _____ | |
| *8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ | |
| | YES | NO |
| -9. Is line 7 at least \$10 million? | _____ | _____ |
| -10. Is line 7 at least 6 times line 3? | _____ | _____ |
| *11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. | _____ | _____ |
| -12. Is line 8 at least 6 times line 3? | _____ | _____ |

(The following is to be completed by all firms providing the financial test)

I hereby certify that the wording of this letter is identical to the wording specified in LAC

33:IX.7307.B.8.d.

{Signature of chief financial officer for the firm}

{Typed name of chief financial officer}

{Title}

{Date}

J. ~~Appendix J Corporate Guarantee~~

~~COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND
APPLIER OF BIOSOLIDS LAND APPLICATION SITE~~

~~CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST
CLOSURE CARE~~

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code (LAC)*, Title 33, Part IX.7307.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"], hereinafter referred to as [insert "permit holder" or "applicant"], for the following commercial preparer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post closure and the amount of annual aggregate liability coverage, closure, and/or post closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure and/or post closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post closure care," or "closure and post closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.7307.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post closure estimates as specified in LAC 33:IX.7307.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facility, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post closure, insert "amendment or modification of the closure and/or post closure care, the extension or reduction of the time of performance of closure and/or post closure"], or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"] for the above listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received

~~by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].~~

~~(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post closure plan and of amendments or modifications of the facility permit(s).~~

~~I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.7307.B.8.i, effective on the date first above written.~~

~~Effective date: _____~~

~~[Name of Guarantor]~~

~~[Authorized signature for guarantor]~~

~~[Typed name and title of person signing]~~

~~Thus sworn and signed before me this [date].~~

~~_____
Notary Public~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:2409 (November 2007), repealed LR 34:**.

Part XV. Radiation Protection

Chapter 14. Regulation and Licensing of Naturally Occurring Radioactive Material (NORM)

§1404. Exemptions

A. – H.5. ...

I. Produced waters from crude oil and natural gas production are exempt from the requirements of these regulations if the produced waters are reinjected into a well approved by the agency having jurisdiction to regulate such injection or if the produced waters are discharged under the authority of the agency having jurisdiction to regulate such discharge and such discharges comply with the applicable regulations of LAC 33:IX.Chapter 7 and of LAC 33:XV.Chapters 4 and 14. ~~Regulations concerning produced waters are referenced in LAC 33:IX.Chapter 7.~~

J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Nuclear Energy Division, LR 15:736 (September 1989), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:605 (June 1992), LR 21:25 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2599 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.